

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

LINDA FAIRSTEIN,)	
)	
Plaintiff,)	Case No: 2:20-cv-00180-FtM-66MRM
)	
v.)	
)	
NETFLIX, INC., AVA DUVERNAY,)	
and ATTICA LOCKE,)	
)	
)	
Defendants.)	

DECLARATION OF KARA L. GORYCKI

I, Kara L. Gorycki, declare as follows:

1. I am Of Counsel to Nesenoff & Miltenberg, LLP, counsel for Plaintiff Linda Fairstein (“Plaintiff”). I submit this declaration in support of Plaintiff’s opposition to Defendant Netflix, Inc.’s Rule 12(b)(6) motion. The statements made herein are based on my personal knowledge.

2. Annexed hereto as Exhibit 1 is a copy of, *Reid v. Viacom Int’l Inc.*, No. 1:14-cv-01252, Order, ECF No. 138 (N.D. Ga. Sept. 14, 2016)

3. Annexed hereto as Exhibit 2 is an excerpt from the Continued Examination Before Trial of Linda Fairstein, April 24, 2013, at NYCLD_039237-50, as downloaded from the New York City Law Department website, <http://www.nyc-cpj.org/Home>, under “Federal Civil Litigation.”

4. Annexed hereto as Exhibit 3 is an excerpt from the Examination Before Trial of Linda Fairstein, April 23, 2013, at NYCLD_038920-45 as downloaded from the New York City Law Department website, <http://www.nyc-cpj.org/Home>, under “Federal Civil Litigation.”

5. Annexed hereto as Exhibit 4 is an excerpt from the Continued Examination Before Trial of Linda Fairstein, May 1, 2013, at NYCLD_039693-99, as downloaded from the New York City Law Department website, <http://www.nyc-cpj.org/Home>, under “Federal Civil Litigation.”

6. Annexed hereto as Exhibit 5 is a copy of Eric A. Seiff, *Weaknesses in Central Park Jogger Case Were Clear All Along*, New York Law Journal, June 3, 2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 1st day of July 2020.

/s/ Kara L. Gorycki
Kara L. Gorycki

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PERRI “PEBBLES” REID,

Plaintiff,

v.

**VIACOM INTERNATIONAL INC.,
VIACOM INC., AND KATE
LANIER,**

Defendants.

CIVIL ACTION FILE

NO. 1:14-CV-1252-MHC

ORDER

This case comes before the Court on the Defendants’ Motion for Summary Judgment [Doc. 100] and Plaintiff’s Motion Under Rule 56(d) to Permit Additional Discovery [Doc. 114] (“Pl.’s 56(d) Mot. for Additional Disc.”).

I. BACKGROUND¹

¹ At the outset, the Court notes that it views the evidence presented by the parties in the light most favorable to Plaintiff. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Sunbeam TV Corp. v. Nielsen Media Research, Inc., 711 F.3d 1264, 1270 (11th Cir. 2013). In addition, the Court has excluded assertions of facts by the parties that are immaterial or presented as arguments or legal conclusions or any fact not supported by citation to evidence (including page or paragraph number). LR 56.1B(1), NDGa. Further, the Court accepts as admitted those facts in the parties’ statements of material facts that have not been specifically controverted with citation to the relevant portions of the record. LR 56.1B(2), NDGa. See Defs.’ Statement of Undisputed Material Facts [Doc. 100-2] (“Defs.’ SUMF”); Pl.’s Resp. to Defs.’ SUMF [Doc. 108-1].

Plaintiff is an internationally renowned singer and performer. Compl. [Doc. 1] ¶¶ 19-22; Defs.' SUMF ¶ 1. She is also a businesswoman who is responsible for the discovery and development of TLC, one of the best-selling all-female musical groups of all time. Compl. ¶¶ 19-20; Defs.' SUMF ¶ 1; Decl. of Tionne "T-Boz" Watkins dated Sept. 22, 2015 [Doc. 100-33] ("Tionne Decl.") ¶ 16; Decl. of Rozonda "Chilli" Thomas dated Sept. 18, 2015 [Doc. 100-31] ("Chilli Decl.") ¶ 13. Plaintiff's companies Pebbitone Inc., Pebbitone Music, and PT Entertainment served at one point in time as TLC's production company, publishing company, and manager, respectively. Defs.' SUMF ¶ 2.

Defendant Viacom International Inc. is a wholly-owned subsidiary of Viacom Inc. (collectively "Viacom"), which owns, operates and controls the cable network VH1. Defs.' SUMF ¶ 3; Compl. ¶ 13. Defendant Kate Lanier ("Lanier") is a screenwriter of major motion pictures. Defs.' SUMF ¶ 4.

The above-styled action for defamation was brought by Plaintiff against Defendants based on scenes of and concerning Plaintiff that were broadcast in the made-for-TV program produced by Viacom and written by Lanier titled "CrazySexyCool: The TLC Story" (the "Movie"). Compl. ¶ 1; Defs.' SUMF ¶ 5.

A. The Creation of TLC

In 1990, Plaintiff assisted her husband L.A. Reid with the development of his record company LaFace (a division of Arista Records). Compl. ¶ 24; Defs.’ SUMF ¶¶ 7-8. This assistance included searching for musical talent. Compl. ¶¶ 24, 26. As a part of this effort, Plaintiff was introduced by her hairdresser to Tionne “T-Boz” Watkins (“Tionne”) who, along with Lisa “Left Eye” Lopes (“Lisa”) and Crystal Jones (“Crystal”), comprised an all-female R&B group in Atlanta called “Second Nature.” Compl. ¶¶ 28-29; Defs.’ SUMF ¶¶ 9-10. After the three sang for Plaintiff, she recognized their talent and informally became their manager. Compl. ¶¶ 37-38; Tionne Decl. ¶ 7. Plaintiff renamed the trio “TLC” after the first initials of their first names. Compl. ¶ 41; Defs.’ SUMF ¶ 13. Plaintiff arranged for TLC to audition for LaFace. Compl. ¶ 44; Defs.’ SUMF ¶ 15. After the audition, Plaintiff informed Tionne and Lisa that she was interested in signing them, but not Crystal, to Pebbitone Inc. and Pebbitone Music as the group’s production company and publishing company. Defs.’ SUMF ¶ 17. To replace Crystal, Plaintiff, Tionne, and Lisa auditioned Rozonda Thomas (a back-up dancer for a LaFace act). Defs.’ SUMF ¶ 20. The group approved of Ms. Thomas

as a new member and dubbed her “Chilli” (“Chilli”), so as to maintain the rationale for “TLC.”² Defs.’ SUMF ¶ 21.

B. The Signing of TLC

On February 13, 1991, Tionne, Lisa, and Crystal were formally released from their previous management agreement with Ian Burke (when they were known as Second Nature). Letter Agreement dated February 7, 1991 [Doc. 100-39]. On February 28, 1991, Tionne and Lisa signed a production agreement (the “Production Agreement”) [Doc. 100-40] and a songwriter agreement (the “Publishing Agreement”) [Doc. 100-41] with Pebbitone, Inc. and Pebbitone Music, respectively. Defs.’ SUMF ¶ 18. Approximately one month later, on April 2, 1991, the Production Agreement and Publishing Agreement were amended to add Chilli as a member of TLC. Amendment to Production and Publishing Agreements [Doc. 100-45]. On April 3, 1991, the members of TLC signed a management agreement with PT Entertainment (the “Management Agreement”) [Doc. 100-46]. The face of Production and Publishing Agreements, the Amendment to the Production and Publishing Agreements, and the Management Agreement all indicate that attorney Jody Graham Dunitz, of Manatt, Phelps &

² The references in this Order to “TLC,” unless otherwise indicated, will mean Lisa, Tionne, and Chilli acting as the group TLC.

Phillips, represented Plaintiff and her companies. The same agreements indicate that attorney Marsha Sutherland of Katz & Cherry, P.C., represented Tionne, Lisa, and Chilli.

On May 10, 1991, Pebbitone, Inc. and LaFace executed an agreement for LaFace to serve as the record label for TLC (the “Recording Agreement”). [Doc. 100-47.]³ The members of TLC also signed inducement letters agreeing to provide their services exclusively to LaFace during the term of the Recording Agreement. Id. Pursuant to the Recording Agreement, Pebbitone was required to provide the services of TLC to LaFace, which was given the exclusive right to distribute TLC’s records. Id.

Both Tionne and Chilli state that Plaintiff arranged for them to meet with an attorney at a “well-known Atlanta entertainment law firm” to review the contents of the Contracts before they signed them. Tionne Decl. ¶¶ 10-11; Chilli Decl. ¶ 8. Tionne and Chilli admit that they reviewed the Contracts with the attorney and signed them.⁴ Tionne Decl. ¶ 11; Chilli Decl. ¶ 8.

³ The Court will refer to the Production Agreement, the Publishing Agreement, the Management Agreement, and the Recording Agreement collectively as “the Contracts.”

⁴ Although it is not clear from their declarations, it would appear that Tionne and Chilli may have met with an attorney from Katz & Cherry, P.C. See Dep. of

C. “CrazySexyCool: The TLC Story”

On October 21, 2013, the Movie was aired on VH1. Compl. ¶ 116. The Movie was advertised by VH1 as “the true story of three girls who were meant to be,” Video Advertisement [Doc. 121], and “the true story of the best-selling female R&B group of all time,” Video Advertisement [Doc. 122]. Defendants have represented that the Movie is the “true account” of TLC from the perspective of Tionne and Chilli. See Dep. of Maggie Malina (the Rule 30(b)(6) representative for Defendants) taken April 23, 2015 [Doc. 86] (“Malina I Dep.”) at 106; see also Dep. of Kate Lanier taken June 18, 2015 [Doc. 90] (“Lanier Dep.”) at 39, 60, 76. In writing the Movie script, Lanier primarily relied upon the first-hand accounts of Tionne and Chilli, but she also watched the Behind the Music documentary on TLC and a documentary entitled “Last Days of Left Eye.” Lanier Dep. at 18, 24-25. With regard to any scenes in the Movie about Plaintiff, Tionne and Chilli were Lanier’s sole source:

Q. Did you do anything else besides talk to “Chilli” and Tionne to gather the information that was in the movie about Perri “Pebbles” Reid?

Tionne Watkins taken July 14, 2015 [Doc. 92], at 15; see also Dep. of Rozonda “Chilli” Thomas taken July 8, 2015 [Doc. 91], at 11-12.

A. They were the – they were the source and the truthful perspective of their own lives. So I had no – it was never a question.

Q. So the answer to my question is, no, you didn't do anything else except talk to "Chilli" and Tionne to gather the information that was in the movie about Perri "Pebbles" Reid?

A. Right.

Q. The answer to my question is, you did not do anything else?

A. Right.

Id. at 25.

D. Alleged Defamatory Scenes

Plaintiff's Complaint includes fifteen specific allegations that she has been defamed based on scenes (or combination of scenes) that directly and/or implicitly convey that:

- 1) TLC and Plaintiff had the same attorneys.
- 2) Plaintiff exercised control over TLC's attorneys for her personal benefit and to the detriment of the members of TLC.
- 3) Plaintiff exercised control over TLC's accountants for her personal benefit and to the detriment of the members of TLC.
- 4) Plaintiff pressured TLC to sign contracts without reading them or having them reviewed by TLC's counsel.
- 5) Plaintiff failed or refused to provide copies of contracts to TLC.

- 6) Plaintiff had the ability to prevent, and did prevent, TLC from obtaining copies of contracts relevant to the group.
- 7) Plaintiff only paid TLC Twenty-Five Dollars (\$25.00) per week.
- 8) Plaintiff made the decision to remove Chilli from TLC.
- 9) Tionne had disclosed her health issues to Plaintiff prior to TLC signing any contracts.
- 10) Plaintiff asked or caused Tionne to put money before her health.
- 11) Plaintiff improperly deducted expenses from TLC's payments.
- 12) Plaintiff forced or coerced TLC into contracts that created a "windfall" or unearned fees benefiting Plaintiff to the detriment of the members of the group.
- 13) Plaintiff did not make a personal investment in TLC or its members.
- 14) Plaintiff did not earn fees received from contracts she had with TLC.
- 15) Plaintiff was aware that Chilli had an abortion and was involved in her decision to have the abortion performed.

Compl. ¶ 124.

II. LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A party seeking summary judgment has the burden of informing

the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions,” and cannot be made by the district court in considering whether to grant summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also Graham v. State Farm Mut. Ins. Co., 193 F.3d 1274, 1282 (11th Cir. 1999).

If a movant meets its burden, the party opposing summary judgment must present evidence that shows there is a genuine issue of material fact or that the movant is not entitled to judgment as a matter of law. Celotex, 477 U.S. at 324. In determining whether a genuine issue of material fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, “and all justifiable inferences are to be drawn” in favor of that opposing party. Anderson, 477 U.S. at 255; see also Herzog v. Castle Rock Entm’t, 193 F.3d 1241, 1246 (11th Cir. 1999). A fact is “material” only if it can affect the outcome of the lawsuit under the governing legal principles. Anderson, 477 U.S. at 248. A factual dispute is “genuine” if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Id.

“If the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial.” Herzog, 193 F.3d at 1246. However, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party,” summary judgment for the moving party is proper. Matsushita, 475 U.S. at 587.

III. ANALYSIS

Plaintiff’s Complaint consists of a single count for defamation. See Compl. ¶¶ 115-26. Defamation under Georgia law has been codified at O.C.G.A. §§ 51-5-1 *et. seq* (2015). “Libel” is a published “false and malicious defamation of another, expressed in print, writing, pictures, or signs, tending to injure the reputation of the person and exposing him to public hatred, contempt, or ridicule.” O.C.G.A. § 51-5-1. “Slander or oral defamation consists in . . . [m]aking charges against another in reference to his trade, office, or profession, calculated to injure him therein. O.C.G.A. § 51-5-4(a)(3). “Defamation via a radio or television broadcast (or a “defamacast,” as it has become generally known) includes elements of both libel under OCGA § 51-5-1, and slander under OCGA § 51-5-4.” Strange v. Henderson, 223 Ga. App. 218, 219 (1996) (citations omitted).

To prove defamation under Georgia law, Plaintiff must establish the following four elements: “(1) a false and defamatory statement concerning the

plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special harm or the actionability of the statement irrespective of special harm.”⁵ Infinite Energy, Inc. v. Pardue, 310 Ga. App. 355, 356 (2011) (quoting Mathis v. Cannon, 276 Ga. 16, 20-21 (2002)). A statement via radio or television broadcast must be “both false and malicious” to be actionable, “and the burden of proving a statement’s falsity is on the plaintiff.” Jaillett v. Ga. Television Co., 238 Ga. App. 885, 888 (1999) (citations and quotations omitted). Additionally, when the plaintiff is a public figure,⁶ she must show that the defendant was at fault in publishing the statements, by proving by clear and convincing evidence that the defendant acted with actual malice, or with knowledge that the statements were false or with reckless disregard

⁵ Defendants argue in a footnote that any statement that is not libelous *per se* must be dismissed as a matter of law because Plaintiff cannot show special damages. Defs.’ Br. at 15 n. 37. Defendants do not indicate which scenes they contend are not libelous *per se*. Both cases relied upon by Defendants hold that statements that tend “to injure one in his trade or business” are libelous *per se*. See McGowan v. Homeward Residential, Inc., 500 F. App’x 882, 886 (11th Cir. 2012); Zarach v. Atlanta Claims Ass’n, 231 Ga. App. 685, 688 (1998). The Court finds that, to the extent the scenes referenced in Plaintiff’s Complaint are found to be defamatory, they would tend to injure her with respect to her business or trade. Accordingly, the Court rejects Defendants’ argument.

⁶ There is no dispute that Plaintiff is a public figure.

as to their falsity. Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974); Pardue, 310 Ga. App. at 358 (citing Mathis, 276 Ga. at 22).

Defendants argue that they are entitled to judgment as a matter of law because (A) the scenes Plaintiff identifies as defamatory are not reasonably susceptible of the defamatory meanings Plaintiff ascribes to them, (B) the undisputed facts reveal that certain of the inferences conveyed by the scenes identified by Plaintiff are substantially true, and (C) there is no evidence that any false inference conveyed in the Movie was published with actual malice. Defs.’ Mem. of Law in Supp. of Their Mot. for Summ. J. [Doc. 100-1] (“Defs.’ Br.”).⁷

⁷ Defendants argue throughout their brief that the Movie is a “Docudrama,” characterized as a dramatization of the lives of real people, and should be analyzed in that context. Defendants maintain that, in this context, an author is given leeway to present a “creative interpretation of reality” because “most viewers ‘would be sufficiently familiar with the genre to avoid assuming that all the statements within them represent assertions of verifiable facts.’” Defs.’ Br. at 16 (quoting Davis v. Costa-Gavras, 654 F. Supp. 653, 658 (S.D.N.Y. 1987)), 18, 23, 25, and 32. The Court declines to apply a more relaxed “docudrama” standard. The Movie was billed as a “true story” and Defendants have not presented a controlling case in which a work billed as “true story,” was held to a lesser standard. In fact, in one case cited by Defendants, Thoroughbred Legends, LLC v. The Walt Disney Co., the court was unwilling to find, as Defendants would have this Court find, that “no one could reasonably understand the scenes as “describing actual facts . . . or actual events.” No. 1:07-CV-1275-BBM, 2008 WL 616253, at *13 (N.D. Ga. Feb. 12, 2008) (internal punctuation omitted). Similarly, the Movie is billed as a “true story” without using qualifying terms such as “based on” or “adapted from.” There is nothing about the context of this “true story” that would convince a viewer that it represented anything other than actual facts or events.

A. Are the Scenes Incapable of Defamatory Meaning as a Matter of Law?

Generally, “the question whether a particular publication is libelous, that is, whether the published statement was defamatory, is a question for the jury.

However, if the statement is not ambiguous and can reasonably have but one interpretation, the question is one of law [left to the judge].” Monge v. Madison Cty. Record, Inc., 802 F. Supp. 2d 1327, 1333 (N.D. Ga. 2011) (quoting Cox Enters., Inc. v. Nix, 274 Ga. 801, 803 (2002)).

A publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So the whole item . . . should be read and construed together, and its meaning and signification thus determined. When thus read, if its meaning is so unambiguous as to reasonably bear but one interpretation, it is for the judge to say whether that signification is defamatory or not. If upon the other hand, it is capable of two meanings, one of which would be libelous and actionable and the other not, it is for the jury to say, under all the circumstances surrounding its publication, including extraneous facts admissible in evidence, which of the two meanings would be attributed to it by those to whom it is addressed or by whom it may be read.

Hoffman-Pugh v. Ramsey, 193 F. Supp. 2d 1295, 1299 (N.D. Ga. 2002), aff’d, 312 F.3d 1222 (11th Cir. 2002) (quoting Ledger-Enquirer Co. v. Brown, 214 Ga. 422, 424 (1958)).

1. Are Plaintiff's alleged defamatory implications plausible?

Defendants contend that the Movie does not plausibly imply the defamatory inferences ascribed by Plaintiff. Defs.' Br. at 17-21.⁸ As explained in the two subsections below, the Court finds that ten of the fifteen specific allegations of defamation are comprised of scenes or a combination of scenes which cannot be shown to have only one interpretation so as to permit the Court to conclude as a matter of law that they are not capable of supporting Plaintiff's claim for defamation; that is a determination to be made by a jury. However, the Court also finds that five of Plaintiff's specific allegations of defamation are comprised of scenes or a combination of scenes that cannot plausibly infer the meaning ascribed to them by Plaintiff, so that the Court can determine that those alleged scenes are not capable of supporting Plaintiff's claim for defamation as a matter of law.

⁸ Although Defendants appear to attack Plaintiff's entire list of fifteen specific allegations of defamation in the Movie, they cite in their brief to only "a few key examples," and then reference the declaration of Maggie Malina [Doc. 100-3] as containing "additional examples." Defs.' Br. at 17 n.40. The Court has viewed the record in its entirety (including the scenes comprising the fifteen specific allegations of defamation referenced in the Complaint) and has relied on both its observations of the material presented in the Movie as well as a consideration of the arguments of counsel.

a. Scenes which plausibly imply a defamatory inference.

First, Defendants assert that the Movie does not literally or by implication convey that Plaintiff pressured TLC to sign contracts without providing them the time to read them or having them reviewed by TLC's counsel. Defs.' Br. at 18; Decl. of Maggie Malina in Supp. of Defs.' Mot. for Summ. J. [Doc. 100-3] ("Malina Decl.") ¶ 80; see also Compl. ¶ 124(d). Plaintiff alleges that the Movie implies that she failed or refused to provide, or had the ability to prevent and did prevent TLC from obtaining, copies of their contracts. Compl. ¶¶ 124(e) & (f). Although the Movie does not literally state that TLC was pressured into signing contracts without reading them or having them reviewed by TLC's counsel, or that TLC was prevented from reading their contracts, a viewer could reasonably infer this by implication based on two scenes in the Movie. First is the scene in which the TLC members each have a contract in front of them to review and sign while they were sitting in a restaurant at the same table with Plaintiff:⁹

Pebbles: I think you'll find these contracts are standard management and label deals. Welcome to Pebbitone and the start of your careers.

[Chilli, Tionne, and Lisa scream with excitement and talk over each other.]

⁹ References to individuals in the various scenes described in this Order are taken from lines performed by the actors who play those individuals in the Movie.

Tionne: Speaking of money, how much we gettin'?

Pebbles: Right now you'll get a weekly stipend of \$25.00, enough to cover food and expenses.

Lisa: That's it?

Pebbles: Let me tell you something. I'm investing in you right now. I'm paying for rehearsal time, studio time, promotions, and videos. The money will come in later, but for now, it's my risk. This is how it works, girls. If you don't like it, you don't have to sign. I can find three other girls who would do this in a second.

Narrator: We just knew we was gonna be it – and we believed signing those papers meant we were gonna be taken care of, too.

The second scene occurs later in the Movie when the members of TLC visit

Pebbles:

Lisa: Perri, hey, we got something we want to talk to you about.

Pebbles: What's going on?

Tionne: All right, so we never got a copy of our contracts, and we just thought we should have that.

Chilli: Yeah, you know, just to check them out. Make sure we understand everything.

Pebbles: You don't think I've taken care of you? I have loved you and nurtured you like you were my own kids.

Tionne: We know that.

Lisa: Yeah, for sure, we know that.

Pebbles: (Sighs) . . . and you don't trust me. I got to say, I'm kind of hurt. Excuse me. (Pebbles walks out of the room.)

Narrator: We knew something was up with our contracts but we were in the middle of our first tour and, man, were we having a blast.

Defendants assert there is but one interpretation of these scenes and it is not defamatory. However, viewed as a whole and in a light most favorable to Plaintiff's claims in this case, the scenes depicting the TLC members signing their contracts and then being unable to get copies of the contracts from Plaintiff are reasonably capable of multiple interpretations, including one that is defamatory to Plaintiff. The scenes plausibly imply that Plaintiff pressured the TLC members into signing the Contracts without reviewing them or having them reviewed by counsel, and refused to give them copies upon their request. Accordingly, whether these scenes reasonably impart the meaning Plaintiff maintains they do is a matter for a jury to decide.

Second, Plaintiff contends that there are scenes in the Movie that convey that TLC and Plaintiff had that same attorneys and that Plaintiff exercised control over those attorneys to the detriment of TLC. Compl. ¶¶ 124(a), (b). The relevant scene in the Movie is presented as follows:

Attorney: Ladies, sorry to be running late. How can I help you?

Lisa: We want to take a look at our contracts.

Attorney: Okay, let me speak to Pebbles.

Tionne: Why? Aren't you our lawyer?

Attorney: Well, yes.

Lisa: See, I'm confused.

Attorney: But I have to speak to her, because . . .

Chilli: Hold up. Are you her lawyer too?

Attorney: (Pauses) Yes.

Lisa: Now I'm really confused.

Tionne: Wait, how can you represent us and Pebbles?

Chilli: Yeah, how can you look out for both groups? That don't even make no sense.

Attorney: (Pauses) To be honest, no one thought you girls were gonna make it this big.

Lisa: Oh, that's foul.

Tionne: Look, we don't care what y'all thought, why aren't we making any money?

Attorney: (Pause, then opening a desk drawer to pull out a document, then thumbing through it) For starters, you have an obligation to pay back the label for all the production costs, including studio and rehearsal times, promotions, tour expenses, transportation, meals, gifts,

etcetera. Now that's fairly standard. Mrs. Reid is also taking a percentage as a manager. Then taking a percentage for her label, Pebbitone, which is also an imprint of LaFace, which is L.A. Reid's label. Oh, and LaFace also gets a cut.

Chilli: This is some bulls***. We got a platinum album, and we ain't got nothing.

Lisa: Except the cars she bought us.

Tionne: Nah, we probably paid for them too.

Attorney: Yeah, you did.

Lisa: That's f***ed up.

Chilli: What we gonna do?

Tionne: Something new.

This scene plausibly implies that Plaintiff exercised control over TLC's attorney (who was portrayed as representing Plaintiff as well) for her benefit and to their detriment. Once again, whether this scene reasonably imparts the meaning Plaintiff maintains it does is a matter for a jury to decide.

Third, Defendants argue that the Movie does not directly or implicitly convey the idea that Plaintiff improperly deducted expenses from payments that would otherwise have gone to TLC. Defs.' Br. at 18; see also Compl. ¶¶ 124(k), (l). The Movie contains several scenes during which the members of TLC grapple

with the fact that numerous expenses were deducted from what they thought they should have been getting paid.

Viewed as a whole and in a light most favorable to Plaintiff's claims in this case, the scenes depicting deductions from payments TLC would otherwise have received is not so unambiguous as to reasonably have but one interpretation. The scenes viewed collectively are capable of an interpretation in which Plaintiff was responsible for the allegedly improper deductions, as well as causing Plaintiff to retain unearned fees to the detriment of the group. Accordingly, the Court finds that whether the scenes depicting the deductions from TLC's pay reasonably impart the meaning ascribed to them by Plaintiff is a matter for a jury to decide.

Fourth, Defendants argue that no reasonable viewer could conclude that the Movie implies that Plaintiff paid TLC only \$25.00 per week. Defs.' Br. at 19; see also Compl. ¶ 124(g). Defendants are correct that, during the scene in which Plaintiff informs TLC that they will be paid a \$25.00 weekly stipend, she modifies that statement with words like "right now," implying that the \$25.00 weekly stipend would be temporary at the outset of the relationship.¹⁰

¹⁰ Defendants also refer to another scene during which Lisa indicates that the TLC members are getting paid \$50,000.00 per year. This later scene, however, does not include any information that it is Plaintiff that is paying TLC the \$50,000.00 per year. Additionally, the scene takes place at a moment in the story after which TLC and Plaintiff have ceased working with each other. On the other hand, there is an

Viewed as a whole and in a light most favorable to Plaintiff's claims in this case, the scenes depicting Plaintiff as having paid TLC only a \$25.00 weekly stipend are not so unambiguous as to reasonably have but one interpretation. The scenes viewed collectively are capable of an interpretation in which Plaintiff paid the members of TLC only \$25.00 per week. Accordingly, the Court finds that whether the scenes indeed depict Plaintiff as having paid TLC only \$25.00 per week is a matter for a jury to decide.

Fifth, Plaintiff contends that there are scenes in the Movie which implicitly convey the impression that it was Plaintiff's decision to remove Chilli from TLC. Compl. ¶ 124(h). The Movie includes a scene in which Plaintiff confronts Chilli and declares "I am suspending you without pay. . . . You are on probation Missy. I don't want to see your face for a couple days, understand? And then we'll see." The scene is followed by another wherein Plaintiff is talking to Tionne and Lisa:

Pebbles: We need to replace her [Chilli].

Tionne: No, no way.

earlier scene in the Movie where, in response to an inquiry from Lisa, "Why we ain't rich yet?", Plaintiff says, "Nobody sees any money until the second album. There's cost of production, videos, touring costs. The label absorbs all of that and then gets reimbursed. We'll be lucky if we break even." This scene reinforces the implication that the members of TLC were not paid more than the \$25.00 "stipend" until some point in time after the release of their second album.

Pebbles: Find another girl.

Tionne: She was perfect, man.

Pebbles: Anyone can be replaced. And do not talk to her. I'll announce the auditions on the radio.

This interaction is followed by a scene in which Tionne and Lisa interview numerous potential candidates to replace Chili. Tionne and Lisa then go back to Plaintiff and inform her that there is no one who can replace Chilli, implicitly requesting to allow Chilli to come back to the group. Plaintiff responds: "Fine, but you better make sure she is ready for that video shoot next week." After Plaintiff consents, Tionne and Lisa call Chilli to tell her that she is back in the group.

Viewed as a whole and in a light most favorable to Plaintiff's claims in this case, the scenes conveying the impression that it was Plaintiff's decision to remove Chilli from TLC are not so unambiguous as to reasonably have but one interpretation. The scenes viewed collectively are capable of an interpretation in which Plaintiff was the one responsible for removing Chilli from TLC. Accordingly, the Court finds that whether the scenes indeed depict Plaintiff as having removed Chilli from TLC is a matter for a jury to decide.

Based on the foregoing discussion, the Court finds that ten of the fifteen specific allegations of defamation referenced in Paragraph 124 of Plaintiff's Complaint (subparagraphs (a), (b), (d), (e), (f), (g), (h), (k), (l), and (n)) are

supported by scenes from the Movie that plausibly infer the information about Plaintiff that a reasonable jury could determine was defamatory.

b. Scenes which cannot plausibly imply a defamatory inference.

First, Defendants argue that there is no scene in the Movie that directly states or otherwise implies that Tionne disclosed her health issues to Plaintiff prior to signing any contract or that Plaintiff asked or caused Tionne to put money before health. Defs.' Br. at 20; see also Compl. ¶¶ 124(i), (j). The Court agrees with Defendants. Viewing the scenes collectively in a light most favorable to Plaintiff's claims in this case, the Court finds that the Movie is incapable of any interpretation (directly or implicitly) that (1) Tionne disclosed her health issues to Plaintiff prior to signing any contract or (2) that Plaintiff asked Tionne to put money before health. Because there is no scene in the Movie that supports these implications, the Court need not determine whether such implications are defamatory of Plaintiff and finds that Defendants are entitled to judgment as a matter of law on these two portions (Compl. ¶¶ 124(i), (j)) of Plaintiff's claim for defamation.¹¹

¹¹ Plaintiff cites to a tweet from an individual who purportedly watched the Movie and posted the comment "Pebbles Be Like . . . That's Coming Out Yo Pay" coupled with a picture of an individual in a body cast laying in a hospital bed as evidence that a reasonable viewer could conclude that the Movie implies that

Second, Defendants argue that nothing in the Movie implies that Plaintiff was involved in Chilli's abortion. Defs.' Br. at 20-21; see also Compl. ¶ 124(o). The Court agrees with Defendants. Viewing the scenes collectively in a light most favorable to Plaintiff's claims in this case, the Court finds that they are incapable of any interpretation (directly or implicitly) that Plaintiff was aware that Chilli had an abortion or was involved in Chilli's decision to have an abortion performed. Because there is no scene in the Movie that supports the implication that Plaintiff was aware of Chilli's abortion or was involved in that decision, the Court need not determine whether such an implication is defamatory of Plaintiff and finds that Defendants are entitled judgment as a matter of law on that portion (Compl. ¶ 124(o)) of Plaintiff's claim for defamation.

Third, Defendants contend that nothing in the Movie directly or implicitly conveys that Plaintiff exercised control over TLC's accountants for her personal benefit or to the detriment of TLC. Defs.' Br. at 17 (citing Malina Decl. ¶ 79); see also Compl. ¶ 124(c). The Court again agrees with Defendants. Viewing the scenes collectively in a light most favorable to Plaintiff's claims in this case, the Court finds that they are incapable of any interpretation (directly or implicitly) that

Plaintiff asked Tionne to put money before health or that Tionne disclosed her health condition to Plaintiff. The Court does not find the "evidence" Plaintiff has presented sufficient to create an issue of fact.

Plaintiff had any control over the accountants. There is no mention of accountants in the Movie until the scene where TLC accosts Clive Davis (founder and President of Arista Records) in his office to demand more money, and Davis indicates he would talk to the accountants. Plaintiff is not mentioned at all during this scene. Because there is no scene in the Movie that supports the implication that Plaintiff exercised control of TLC members' accountants for her own benefit or to the detriment of TLC, the Court need not determine whether such an implication is defamatory of Plaintiff and finds that Defendants are entitled judgment as a matter of law on that portion (Compl. ¶ 124(c)) of Plaintiff's claim for defamation.

Finally, Defendants contend that nothing in the Movie directly or implicitly conveys that Plaintiff did not make a personal investment in TLC or its members. Defs.' Br. at 17 (citing Malina Decl. ¶ 84); see also Compl. ¶ 124(m). The Court again agrees with Defendants. Viewing the scenes collectively in a light most favorable to Plaintiff's claims in this case, the Court finds that they are incapable of any interpretation (directly or implicitly) that Plaintiff failed to make a personal investment in TLC. In fact, the Movie indicates the opposite. In the scene where Pebbles meets with TLC in the restaurant when the contracts are signed, Pebbles says, "I am investing in you right now. I'm paying for rehearsal time, studio time,

promotions and videos. The money will come in later, but for now, it's my risk." In the scene where TLC asks Pebbles to see their contracts, Pebbles says, "You don't think I've taken care of you? I have loved and nurtured you like you were my own kids." There are other scenes where Pebbles is portrayed as being directly involved with TLC's auditions and tours. Because there is no scene in the Movie that supports the implication that Plaintiff did not make a personal investment in TLC, the Court need not determine whether such an implication is defamatory of Plaintiff and finds that Defendants are entitled judgment as a matter of law on that portion (Compl. ¶ 124(m)) of Plaintiff's claim for defamation.

Based on the foregoing discussion, the Court finds that five of the fifteen specific allegations of defamation referenced in Paragraph 124 of Plaintiff's Complaint (subparagraphs (c), (i), (j), (m), and (o)) refer to matters for which there are no scenes in the Movie for which a juror could possibly infer (directly or implicitly) the allegedly defamatory meaning that Plaintiff ascribes to them.

2. Are the scenes not defamatory as a matter of law?

Assuming *arguendo* that the ten scenes or combination of scenes identified in Plaintiff's Complaint (referenced above in Section III(A)(1)(a)) contain the implications that Plaintiff ascribes to them, Defendants argue that many of those alleged implications are not defamatory as a matter of law. Defs.' Br. at 21-22.

First, Defendants argue that the implication that Plaintiff and TLC had the same attorney and that Plaintiff exercised control over the attorney for her personal benefit to the detriment of TLC is not defamatory as to Plaintiff as a matter of law. Id.; see also Compl. ¶¶ 124(a), (b). Defendants argue that, if anything, these scenes reflect poorly on the attorney's reputation in his profession. Defs.' Br. at 21-22. The Court disagrees.

Viewed as a whole and in a light most favorable to Plaintiff's claims in this case, the scenes indicating that the same attorney represented Plaintiff as well as TLC and that Plaintiff exercised control over the attorney for her personal benefit to the detriment of TLC are not so unambiguous as to reasonably have but one non-defamatory interpretation. These scenes viewed collectively are capable of an interpretation in which Plaintiff was the individual who presented the Contracts to TLC and arguably pressured them into signing without giving them an opportunity to independently review the Contracts or have them reviewed by counsel. This interpretation could be found to be defamatory to Plaintiff, i.e., could be seen to injure Plaintiff's reputation in the music industry and expose her to public hatred, contempt, or ridicule.

Further, a reasonable viewer could interpret these scenes to carry an implication that Plaintiff controlled the lawyer who represented TLC and retained

him as her attorney as well. In one of the scenes, once TLC grew upset with their lack of compensation and sought out their lawyer to discuss the Contracts, the first thing the lawyer says in response to their queries about the seemingly-deficient compensation and wanting to see their contracts is “[o]kay, let me speak to Pebbles.” It is possible that a reasonable viewer could understand this to mean that this lawyer, who is purportedly TLC’s lawyer, placed a priority on his representation of Plaintiff over TLC. In the same scene, in response to direct questioning from TLC, the lawyer hesitantly admits that he represents both Plaintiff and TLC. He then appears to read from one of the Contracts while explaining the details of the agreements, such as the costs and expenses that were deducted from their pay, as well as the shares of revenue that went to Plaintiff as their manager and the shares that went to Plaintiff’s music label and elsewhere. TLC expresses outrage that they recorded an album that sold over a million units and had nothing to show for it. One TLC member questions: “[w]hat we gonna do?” And another responds, “[s]omething new.” Then, the next scene is a meeting between TLC and L.A. Reid in which TLC informs him that they were no longer going to work with Plaintiff as their manager.

Although these scenes may show the lawyer in a bad light, the scenes viewed collectively may also tend to injure the reputation of Plaintiff by implying

that she exercised control over the attorney for her personal benefit to the detriment of TLC. Indeed, one could easily interpret the scenes to imply that TLC blamed Plaintiff for their predicament. Because these scenes are capable of multiple interpretations, one of which could be defamatory and actionable, the Court is unable to conclude that they are not defamatory as a matter of law.

Second, Defendants argue that the scenes implying that Plaintiff failed or refused to provide copies of the Contracts to TLC, or prevented them from obtaining the Contracts, are not defamatory as a matter of law. Id. at 22; see also Compl. ¶¶ 124 (e), (f). Defendants reason that Plaintiff testified during her deposition that providing the Contracts to TLC was not her responsibility, but was instead their attorneys' job, and therefore the implications "are simply not defamatory of Pebbles" as a matter of law. Id. The Court disagrees.

Defendants' argument based on Plaintiff's testimony about her actual responsibilities with regard to the Contracts misses the point. It is immaterial whether it was actually Plaintiff's responsibility to show TLC their Contracts. The scenes viewed collectively and in a light most favorable to Plaintiff's claims in this case are capable of an interpretation in which a viewer could be led to believe that Plaintiff was the one who was responsible for providing the Contracts to TLC and failed or refused to do so. As such, the scenes are not so unambiguous as to

reasonably have but one non-defamatory interpretation. Accordingly, the Court finds that whether the scenes depicting Plaintiff's control over the Contracts and failure or refusal to provide the Contracts to TLC are defamatory is a question for the jury to decide.

Third, Defendants contend that the scenes that directly or implicitly convey that Plaintiff made the decision to remove Chilli from TLC cannot be defamatory as a matter of law. Defs.' Br. at 22; see also Compl. ¶ 124(h). Defendants argue that there is nothing illegal or improper about this action as it reflects a legitimate business decision on the part of Plaintiff. Defendants contend that there is no basis for claiming that this scene injured Plaintiff's reputation, or exposed her to public hatred, contempt, or ridicule. Plaintiff argues that these scenes are part of the overall defamatory portrayal of Plaintiff exercising unreasonable control over TLC by attempting to control Chilli's personal relationships and establishing her dominance over the group. Pl.'s Resp. in Opp'n to Defs.' Mot. for Summ. J. [Doc. 108] ("Pl.'s Resp.") at 14. The Court finds the scenes viewed collectively in a light most favorable to Plaintiff's claims in this case are not so unambiguous as to reasonably have but one non-defamatory interpretation. Whether the scenes conveying that Plaintiff made the decision to remove Chilli from TLC were defamatory is a question for the jury to decide.

3. Are the scenes unactionable opinion?

Defendants argue that the Movie is a “docudrama that plainly presents Tionne’s and Chilli’s perspectives” of the TLC story and every scene in the Movie reflects their personal memories. Defendants maintain that the Movie is comprised of scenes filmed from Tionne’s and Chilli’s perspectives which constitute expressions of opinion and are not capable of being defamatory. Defs.’ Br. at 22-25. In support of this position, Defendants point out that the Movie is narrated by the voice of Tionne and begins with the phrase “Here’s what I remember” *Id.* at 23.

Defendants are correct that a pure expression of opinion is not actionable as a matter of law.

The expression of opinion on matters with respect to which reasonable men might entertain differing opinions is not libelous. . . . An assertion that cannot be proved false cannot be held libelous. A writer cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be.

Bergen v. Martindale-Hubbell, Inc., 176 Ga. App. 745, 746 (1985) (quotations and citations omitted).

There is . . . no wholesale defamation exception for anything that might be labeled opinion. An opinion can constitute actionable defamation if the opinion can reasonably be interpreted, according to the context of the entire writing in which the opinion appears, to state

or imply defamatory facts about the plaintiff that are capable of being proved false.

Gast v. Brittain, 277 Ga. 340, 341 (2003) (quotation and citation omitted). The question is whether the scenes “could reasonably be interpreted to state or imply any defamatory facts about [Plaintiff] that are capable of being proved false.” Id.

The Court finds that all of the scenes Plaintiff alleges defame her can reasonably be interpreted to imply facts about her that are capable of being proven true or false. See Compl. ¶ 124.¹² Because the scenes Plaintiff alleges defame her can be interpreted to state or imply facts about her that are capable of being proven false, they are not the type of opinion testimony that is unactionable as a matter of law. See Eidson v. Berry, 202 Ga. App. 587, 588 (1992) (reversing grant of summary judgment where the facts underlying opinion statements were capable of being disproved). Accordingly, Defendants’ Motion for Summary Judgment based on the argument that the scenes are unactionable opinion is **DENIED**.

¹² Defendants cite to several specific lines from the Movie that do not form the basis of Plaintiff’s defamation claim in this case. Defs.’ Br. at 23-25. For example, Defendants argue that Lisa’s statement that “we were not going down in history as just another group who got ripped off,” is a matter of protected opinion and not actionable in this case. This statement, however, is not at issue in this case. Defendants have failed to argue, let alone demonstrate, that any of the fifteen scenes or combination of scenes that Plaintiff is relying upon constitute unactionable opinion.

B. Are Certain Scenes Substantially True?

Defendants argue that Plaintiff is unable to satisfy the falsity element of defamation as to three of the specific allegations of defamation in Plaintiff's Complaint. Defs.' Br. at 25-28. Specifically, Defendants contend that following scenes or combination of scenes are substantially true: (1) the scenes depicting Plaintiff as having control over TLC's attorneys, (2) the scene that the TLC members were paid a \$25.00 per week stipend, and (3) the scene depicting Plaintiff as the individual who removed Chilli from TLC. See Compl. ¶¶ 124(b), (g), (h).

In determining whether a statement is false, defamation law overlooks minor inaccuracies and concentrates upon substantial truth. A statement is not considered false unless it would have a different effect on the mind of the viewer from that which the pleaded truth would have produced. Minor factual errors which do not go to the substance, the gist, the sting of a story do not render a communication false for defamation purposes.

Jaillett, 238 Ga. App. at 888 (internal punctuation and citations omitted).

In support of the contention that the scenes depicting Plaintiff as controlling TLC's lawyers are true, Defendants reference the following evidence from the record: (1) Plaintiff's admission that she directed TLC to the law firm that represented her husband, (2) Plaintiff's admission that she agreed to pay for the first meeting between TLC and their lawyer, (3) deposition testimony from TLC that they were discouraged from talking to their attorneys, (4) evidence that

Plaintiff's management company handled some communications between TLC and their lawyers, and (5) evidence that the bills for TLC's legal work were sent to Plaintiff. Defs.' Br. at 26-27. The Court finds that, as a matter of law, this evidence fails to support the inference that Plaintiff controlled TLC's lawyers. Although this evidence suggests that Plaintiff may have exerted some influence over TLC, it fails to establish that Plaintiff directly controlled TLC's lawyers or was a client of TLC's lawyers as implied by the Movie. Accordingly, Defendants are not entitled to summary judgment on this issue.

Defendants next argue that the scene that the TLC members were paid a \$25 per week stipend is substantially true.¹³ Defs.' Br. at 27. In support of this contention, Defendants rely on evidence that Chilli received a weekly stipend of \$38.33 and Tionne and Lisa each received \$85. Id.

¹³ Defendants cite a state-court case from the Court of Appeals of Texas, where an individual sued a newspaper company over allegedly libelous statements contained in a series of newspaper articles. See Rogers v. Dallas Morning News, Inc., 889 S.W.2d 467 (Tex. App. 1994). The Rogers court found that the essence of the statements at issue in the newspaper's article (*i.e.* the financial competency of the charity's chief executive officer), was "founded on facts that, except for isolated discrepancies in matters of secondary importance, are undisputed." Id. at 473. In light of the undisputed facts supporting the essence of the article, matters of secondary importance, such as the amount spent by the plaintiff's charity, were "isolated discrepancies." Id. at 471, 473. However, in contrast to Rogers, the alleged \$25.00 stipend in this case is not a matter of "secondary importance" in the Movie, as the entire first half of the plot is driven by the fact that the members of TLC believed they were unpaid and sought to receive more compensation.

In response, Plaintiff cites to testimony from a Chapter 11 bankruptcy proceeding involving TLC. Pl.'s Resp. at 19. During this 1996 proceeding, each of the TLC members testified that since the inception of their contracts with Plaintiff's companies they received approximately \$75,000.00 per year on average in the form of advances. See Tr. of Chapter 11 Bankruptcy Proceeding, Case Nos. 95-69127, 95-69128, 95-69129 [Doc. 112] at 11, 52, and 77. Viewing the evidence in a light most favorable to Plaintiff's claims in this case, the Court finds that there is a genuine issue of material fact as to whether the scene in the Movie that the TLC members were paid a weekly stipend of \$25.00 was substantially true, which precludes summary judgment on this issue.

Finally, Defendants argue that the fact that Plaintiff removed Chilli from TLC is demonstrably true, citing (1) a June 7, 1991, letter from counsel for Pebbitone removing Chilli from TLC, (2) deposition testimony from Tionne stating that it was Plaintiff, not the other members of TLC, who decided to kick Chili out of TLC, and (3) deposition testimony from Lanier indicating that both Tionne and Chilli told her that Plaintiff was the individual who decided to kick Chilli out of TLC. Plaintiff cites her own deposition testimony in which she contends that it was the other TLC members who decided to kick Chilli out of TLC. Dep. of Perri "Pebbles" Reid taken Nov. 19, 2014 [Doc. 109-1] at 261-62.

Viewing the evidence in a light most favorable to Plaintiff, the Court finds that there is a genuine issue of material fact as to whether the scene or combination of scenes in the Movie that Plaintiff made the decision to remove Chilli from TLC is true. Thus, judgment as a matter of law is inappropriate as to this issue.

Accordingly, Defendants' Motion for Summary Judgment based on the argument that some of the scenes were substantially true is **DENIED**.

C. Has Plaintiff Failed to Demonstrate Actual Malice?

As a compromise to the First Amendment's protections of free speech and press, the Supreme Court has held that public figures are precluded from recovery for defamation unless the plaintiff can prove the statement was made with actual malice. New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964) (concerning a public official); Curtis Publ'g Co. v. Butts, 388 U.S. 130, 162 (1967) (concerning a "public figure"). "A person has acted with actual malice when a statement is made with knowledge that it was false, or with a high degree of awareness of the statement's probable falsity, or with reckless disregard of whether the statement was false or not." Rebozo v. Washington Post Co., 637 F.2d 375, 380 (5th Cir. 1981) (internal punctuation and citation omitted).¹⁴ Under the actual

¹⁴ In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit issued prior to October 1, 1981.

malice standard, “mere proof of failure to investigate, without more, cannot establish reckless disregard for the truth.” Gertz, 418 U.S. at 332. Rather, there must be “sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” Levan v. Capital Cities/ABC, Inc., 190 F.3d 1230, 1239 (11th Cir. 1999) (quoting St. Amant v. Thompson, 390 U.S. 727, 731 (1968)). A plaintiff must demonstrate actual malice by clear and convincing evidence. Gertz, 418 U.S. at 342. “The standard of proof of ‘actual malice’ with regard to a public figure is extremely high.” Atlanta Humane Soc. v. Mills, 274 Ga. App. 159, 165 (2005).

Although actual malice is subjective, it would be rare for a defendant to admit actual malice. Consequently, a court can infer actual malice from objective facts:

Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call. Nor will they be likely to prevail when the publisher’s allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.

Michel v. NYP Holdings, Inc., 816 F.3d 686, 703 (11th Cir. 2016) (quoting St. Amant, 390 U.S. at 732). “Absent an admission by the defendant that he knew his material was false or that he doubted its truth, a public figure must rely upon

circumstantial evidence to prove his case.” Hunt v. Liberty Lobby, 720 F.2d 631, 643 (11th Cir. 1983) (citation omitted); see also Harte-Hanks, 491 U.S. at 668 (“[A] plaintiff is entitled to prove defendant’s state of mind through circumstantial evidence.”).

Defendants argue that they are entitled to summary judgment on Plaintiff’s claim for defamation because there is no evidence that Defendants published any of the alleged statements or scenes with actual malice. Defs.’ Br. at 28-35.

Plaintiff argues the Court can infer actual malice from circumstantial evidence of objective facts in this case considered as a whole. Pl.’s Resp. at 20-35.

Specifically, Plaintiff relies on the following sets of circumstances which she argues, *inter alia*, would allow a juror to infer actual malice: (1) Defendants intended the defamatory impression of Plaintiff, (2) Defendants rejected information favorable to Plaintiff, and (3) Defendants relied exclusively on biased and unreliable sources in Tionne and Chilli.

1. Evidence that Defendants intended to create an overall defamatory impression of Plaintiff.

Plaintiff has presented evidence she contends demonstrates that Defendants intended to convey a defamatory impression of Plaintiff in the Movie. Pl.’s Resp. at 34-35. Specifically, Plaintiff cites to a November 2012 email sent to Defendants’ employee, Maggie Malina, from casting directors from an entity

called Breakdown Services, Ltd. See E-mail [Doc. 109-42] (“Casting Directors’ Email”). Malina was the Executive Producer for the Movie, in which role she oversaw the Movie’s development and production, found the screenwriter, developed the screenplay, and oversaw the creative execution of the film. Malina Decl. ¶ 7. The subject of the email sent to Malina from the casting directors was “TLC Biopic breakdown for approval and nondisclosure note.” Casting Directors’ Email. Attached to the email were paragraph-length descriptions of the characters of the Movie, including the following description of Plaintiff’s character:

The R&B star and head of Pebatone, [sic] the label she started with her husband L.A. Reid, Pebbles is gorgeous, talented, strong-willed, tough as nails, self-serving and very savvy but not quite ethical businesswoman. She signs TLC and is a relentless taskmaster as they rehearse; jealous of Chilli’s attentions to Dallas, she is particularly hard on Chilli, frequently humiliating her and docking her pay. Pebbles loves having the girls adore her but she doesn’t seem to like paying them, so she distracts them from the fact that she’s never let them see their contracts by giving them all new cars—and mid-level ones at that.

Casting Directors’ Email.¹⁵ Malina, the recipient of the e-mail, testified that Defendants never used the word “unethical” in the Movie and the use of that word

¹⁵ Plaintiff also cites to a March 1, 2013, press release from the agent of the actress who was playing the part of Plaintiff in the Movie and characterized the role in the following manner:

[T]he R&B star and head of Pebatone [sic] and not quite ethical businesswoman. She signs TLC and is a relentless taskmaster as they

was in a document generated by another company (Breakdown Services); nevertheless, she admits that Defendants approved this description of Plaintiff's character in the Movie. Malina I Dep. at 119-20.

Whether Defendants generated the "unethical" phrase in the description of Plaintiff's character or approved this characterization created by Breakdown Services, the Casting Directors' Email and the Press Release constitute evidence from which a reasonable juror could conclude that Defendants intended to put Plaintiff in a "not quite ethical" light, whether by developing that impression themselves, or approving of it. Specifically, a reasonable juror could conclude that Defendants intended to portray Plaintiff as someone who did not like to pay TLC and prevented them from ever seeing their contracts.

rehearse. Jealous of Chilli's (Palmer) attentions to Dallas (Ross), she is particularly hard on Chilli, frequently humiliating her and docking her pay. Pebbles loves having the girls adore her but she doesn't seem to like paying them, so she distracts them from the fact that she's never let them see their contracts!

Press Release dated March 1, 2013 [Doc. 109-67]. Defendants argue that they had no involvement with the press release and it is therefore not imputable to them. Defs.' Reply Br. in Supp. of Their Mot. for Summ. J. [Doc. 125] ("Defs.' Reply") at 20. Although Defendants claim the press release was "put out" by another individual unaffiliated with Defendants, the language used in the press release appears to be suspiciously identical to language found in the Casting Directors' Email and may be additional evidence of actual malice.

2. Evidence that Defendants rejected information favorable to Plaintiff.

Plaintiff also contends that at least one of the editorial script changes made by Defendants in developing the Movie involved the removal of a line that would have moderated the defamatory inferences of a scene and, by removing that line, Defendants increased the likelihood that the a viewer would perceive Plaintiff in a negative light. Specifically, Defendants removed a line in the script that the TLC lawyers reviewed the Contracts before the members signed them.¹⁶ Pl.'s Resp. at 32-34. Plaintiff argues that the deletion of this scene demonstrates bias and a reckless disregard for the truth on the part of Defendants. *Id.*

It is undisputed that Defendants were aware, as informed by both Tionne and Chilli, that TLC's lawyers met with them regarding the Contracts before TLC signed them. Dep. of Maggie Malina taken June 30, 2015 [Doc. 87] ("Malina II Dep.") at 70. The scene that was deleted would have shown TLC at the restaurant booth pulling out their own contracts and Tionne saying "[s]o we had the lawyers look over all of it." See TLC Biopic draft #4 at 17-18; TLC Biopic draft #14 [Doc.

¹⁶ The scene Defendants chose to remove may have also conveyed the image that the TLC members were in possession of their own contracts and dispelled the notion that Plaintiff (1) was responsible for presenting and providing the Contracts to the TLC members, and (2) was able to prevent them from examining the Contracts and seeking counsel from their attorneys.

109-30] at 18-19. Had the deleted scene been included in the Movie, it would have impacted the presentation of other scenes involving the Contracts.

As discussed in Section III(A)(1)(a), based upon the scene in which Plaintiff presents the Contracts to TLC, a reasonable juror could conclude that Plaintiff pressured TLC into signing the Contracts without independently reviewing them or having them reviewed by counsel. This conclusion is based on (1) the fact that Plaintiff introduces and generally describes the Contracts to TLC, (2) their excited reaction after Plaintiff presents the Contracts, (3) the fact that they appear to be uninformed about the basics of the Contracts, and (4) the fact that they all rush to sign the Contracts.

The deleted material arguably would have clarified that TLC had copies of the Contracts at the beginning of the process and that the TLC lawyer independently reviewed the Contracts with the TLC members prior to their signature. An email between Executive Producers Alexander Motlagh and Maggie Malina suggests cutting this scene because “[i]t’s confusing the issue.” E-mail dated June 5, 2013 [Doc. 109-49]. Malina explained that by saying “confusing the issue,” she meant that the Contracts “are standard management and label deals. That’s the issue that [the deleted line is] confusing. [The deleted line] gives us information that suggests that [the Contracts] are not standard. And that’s what I

wanted to clarify.” Malina II Dep. at 75. The Court does not find Malina’s explanation plausible.

More importantly, viewing this evidence in a light most favorable to Plaintiff, the Court finds that a reasonable juror could conclude that Defendants’ decision to delete this material from the Movie was a deliberate effort to convey the alternative, more scurrilous representation that TLC did not independently review the Contracts or meet with their lawyer prior to signing the Contracts, which Defendants knew not to be the case. Hunt, 720 F.2d at 645 (“[A]n inference of actual malice can be drawn when a defendant publishes a defamatory statement that contradicts information known to him, even when the defendant testifies that he believed that the statement was not defamatory and was consistent with the facts within his knowledge.”); see also Time, Inc. v. Ragano, 427 F.2d 219, 221 (5th Cir. 1970) (affirming the denial of summary judgment to publisher finding sufficient evidence of actual malice where there was evidence that the publisher knew the statement published was false and evidence that a previous draft that would have rectified the libelous statement was deleted). Additionally, the deletion of the line in the script that would have established TLC’s lawyer had reviewed the Contracts prior to the meeting with Plaintiff is consistent with Defendants’ possible intent expressed in the Casting Directors’ Email and the

March 1, 2013, Press Release, which describes Plaintiff's character as a "not quite ethical businesswoman" who distracts TLC from the fact that she never let them see the Contracts.

3. Evidence that Defendants relied exclusively on biased and unreliable sources in Tionne and Chilli.

Plaintiff argues that actual malice can be inferred in this case based on Defendants' knowledge that their sources of information (Tionne and Chilli) were (1) biased toward Plaintiff and (2) inherently unreliable based on the fact that their stories changed and were unbelievable. Pl.'s Resp. at 22-25. Plaintiff cites Celle v. Filipino Reporter Enters. Inc., 209 F.3d 163, 183 (2d Cir. 2000), in support of the proposition that the bias Tionne and Chilli had against Plaintiff creates a material issue of fact where a juror could find with convincing clarity that Defendants published the Movie with actual malice. Indeed, the Celle court does recognize that "[e]vidence of ill will combined with other circumstantial evidence indicating that the defendant acted with reckless disregard of the truth or falsity of a defamatory statement may also support a finding of actual malice." Id. The same case, however, clarified that evidence of bias standing alone "is not sufficient to establish actual malice." Id. (citing Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 666 (1989) ("the actual malice standard is not

satisfied merely through a showing of ill will or ‘malice’ in the ordinary sense of the term”)).

Defendants do not dispute that the relationship between Plaintiff and Tionne and Chilli had “degraded,” which was conveyed in the Movie. Defs.’ Reply at 14. Defendants maintain, however, that there was no evidence that the information provided by Tionne and Chilli was unreliable notwithstanding their potential bias towards Plaintiff. Absent evidence that Tionne’s or Chilli’s bias against Plaintiff gave Defendants reason to believe the information obtained from the two TLC members was unreliable, this fact alone does not establish actual malice, although it can be considered as a contributing factor. See Hunt, 720 F.2d at 645 (finding source’s bias against the plaintiff was a contributing factor supporting actual malice).

Plaintiff next argues that Defendants were aware that Tionne and Chilli were inherently unreliable as sources because their stories frequently changed and were unbelievable. Pl.’s Resp. at 23. In support of this argument, Plaintiff relies on the fact that the script of the Movie was revised on numerous occasions¹⁷ and several

¹⁷ Plaintiff has not established that all script changes came about as a result of Tionne and Chilli revising their stories. As Defendants point out, there were changes made throughout the process for “countless creative reasons.” Defs.’ Reply at 15-16. Accordingly, it does not follow that every script change was necessitated by a changing story from Tionne and Chilli.

of Defendants' representatives noted the frequent changes in Tionne's and Chilli's stories. See, e.g., email between Author and Executive Producer Kate Lanier and Executive Producer Maggie Malina dated Feb. 11, 2013 [Doc. 109-105] ("There's def [sic] some revising of incidents as previously told to me."); email between Director Charles Stone and Author and Executive Producer Kate Lanier dated Feb. 12, 2013 [Doc. 109-106] ("Yeah, lots of revising re: what ACTUALLY happened, I've seen this before . . . where it gets close and suddenly all yr [sic] sh*#'s gonna be out there . . . so maybe you wanna [sic] tone it down."). In particular, the director of the Movie questioned one scene that did not make it into the Movie, where the script called for the members of TLC to break into an office to steal their contracts:

Is this real or made up? It feels challenging to do and kinda [sic] nutty—unless it really happened. Tionne seems to think it didn't which is weird. How can you forget something like that if that did happen? Would love to clarify.

See email between Director Charles Stone and Author and Executive Producer Maggie Malina dated Feb. 20, 2013 [Doc. 109-21].

Defendants assert that the numerous script revisions instead show that Tionne and Chilli were vigilant in guarding the truth. See Lanier Dep. at 59-60 (indicating that Tionne and Chilli were "incredibly vigilant" and nothing they told her changed the essential story they first told her, to the extent there were changes

it was to soften some things and “make sure that everything was accurate to their own experience.”), 93-95 (indicating that some scenes were changed to create tension and that not every change in the script was made based on something Tionne or Chilli told Lanier). In fact, the Movie director referred to Tionne and Chilli as the “reality police.” See Email between Director Charles Stone and Author and Executive Producer Kate Lanier dated Feb. 12, 2013.

The Court finds that, to the extent there were changes in the script prompted by Tionne and Chilli’s revisions, the changes were not so numerous or drastic, standing alone, to establish actual malice, although they can be considered as a contributing factor.

4. Review of the cumulative evidence of actual malice.

Proof of actual malice calls a defendant’s state of mind into question, Sullivan, 376 U.S. at 288, but this sort of determination “does not readily lend itself to summary disposition.” Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9 (1979). In determining actual malice, this Court considers the accumulation of direct and circumstantial evidence and the reasonable inferences drawn from both in the context of the Movie as a whole. See Harte-Hanks, 491 U.S. at 688 (holding that a “court must consider the factual record in full” in order to determine actual malice); Hunt, 720 F.2d at 646 (considering the “sum total of the inferences of

actual malice.”); see also Silvester v. Am. Broad. Cos., Inc., 650 F. Supp. 766, 770 (S.D. Fla. 1986) (“When the publication is a television broadcast, the script must be evaluated in its totality, considering all the words used and not merely a particular phrase or sentence.”), aff’d, 839 F.2d 1491 (11th Cir. 1988).

The Court finds the Eleventh Circuit’s decision in Hunt informative. In that case, the Court cited with approval the following passage from a California state court decision in which a jury verdict for a public figure plaintiff was affirmed:

The action by the TV Guide staff showed a reckless disregard of whether the statement published was true or false, because the staff was aware that the true facts, as stated in the press release, were that Pat Montandon was not a call girl but would be appearing on a show with a call girl; and a staff decision was made to leave out crucial facts in rewriting the release, thereby implying that plaintiff was a call girl. This is proof of convincing clarity to support the jury’s verdict that the article was published not in good faith, but with actual malice.

Hunt, 720 F.2d 644–45 (quoting Montandon v. Triangle Publ’ns, Inc., 45 Cal. App. 3d 938, 944 (1975)). In this case, it is undisputed that Defendants knew TLC met independently with an attorney regarding their contracts before signing them, yet decided to reject a scene that would have made this fact clear. Instead, Defendants’ final script arguably created an impression that TLC was introduced to their contracts by Plaintiff, who pressured them into signing the Contracts. See also Ragano, 427 F.2d at 221.

Viewed in a light most favorable to Plaintiff, the Court finds that the evidence that Defendants deleted material that may have rectified some of the allegedly defamatory scenes, in combination with the other circumstantial evidence discussed above, is sufficient for a reasonable jury to find that Defendants purposely avoided or deliberately ignored facts that would have established the falsity of one or more purportedly defamatory scenes. See St. Amant, 390 U.S. at 732 (“The finder of fact must determine whether the publication was indeed made in good faith [R]ecklessness may be found where there are obvious reasons to doubt . . . the accuracy of the reports.”). Therefore, because there is a genuine issue of material fact as to whether Defendants acted in good faith or with actual malice when they published the scenes in question, Defendants’ Motion for Summary Judgment based on the argument that there is no evidence of actual malice is **DENIED**.

IV. PLAINTIFF’S RULE 56(d) MOTION FOR ADDITIONAL DISCOVERY

Plaintiff requests that the Court delay ruling on Defendants’ Motion for Summary Judgment until she has had an opportunity to conduct additional discovery to support of her claim of actual malice. Pl.’s 56(d) Mot. for Additional Disc. Plaintiff seeks discovery related to work performed by Defendants’ legal

department or outside counsel on behalf of Defendants with regard to the verification of facts as represented in the Movie. Plaintiff argues that this discovery is relevant because Defendants are relying on the legal review performed by their in-house and outside counsel to substantiate their argument that there is no evidence of actual malice. Pl.'s 56(d) Mot. for Additional Disc. at 7-8 (citing, *inter alia*, a portion of Defendants' brief in which Defendants state that "at every turn, they corroborated TLC's story and found no evidence to contradict it.>").

Defendants object to this additional discovery on the grounds that it is protected from disclosure by the attorney-client privilege. Moreover, Defendants affirmatively represent that they are not relying on any legal review, "or anything its lawyers may have done," to support their argument as to the absence of evidence of malice. Defs.' Mem. of Law in Opp'n to Pl.'s 56(d) Mot. for Additional Disc. [Doc. 124] at 2-3. In other words, Defendants contend that the evidence relied upon in support of their contention that their own research established their belief in the essential truth of the Movie already has been produced to Plaintiff, and that evidence does not include reliance upon their attorneys' legal review. *Id.* at 3.

Because the Court has found that Plaintiff has presented sufficient evidence of actual malice to raise a jury question and preclude summary judgment, the Court

finds that additional discovery on this issue is unnecessary. Accordingly, the Court **DENIES AS MOOT** Plaintiff's Motion Under Rule 56(d) to Permit Additional Discovery [Doc. 114].

V. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Defendants' Motion for Summary Judgment [Doc. 100] is **GRANTED IN PART** and **DENIED IN PART**. The Court **GRANTS** Defendants' Motion to the extent Plaintiff's claim is based on the scenes described in ¶¶ 124(c), (i), (j), (m), and (o) of the Complaint. Defendants' Motion for Summary Judgment is otherwise **DENIED**.

It is further **ORDERED** that Plaintiff's Motion Under Rule 56(d) to Permit Additional Discovery [Doc. 114] is **DENIED AS MOOT**.

It is further **ORDERED** that the parties shall submit a proposed Consolidated Pretrial Order within thirty (30) days of the entry of this Order.

IT IS SO ORDERED this 14th day of September, 2016.



MARK H. COHEN
United States District Judge

EXHIBIT 2

1
2 - - - - - x
3
4 RE: In re: McCRAY, RICHARDSON,
5 SANTANA, WISE
6 and SALAAM Litigation,
7

Docket No. 03 CV 9685 (DAB) (RLE)

8 99 Park Avenue
9 New York, New York
April 24, 2013
9:37 a.m.

10
11 CONTINUED EXAMINATION BEFORE TRIAL of
12 LINDA FAIRSTEIN, a Defendant in the
13 above-entitled action, held at the above
14 time and place, taken before Alice
15 Schulman, a Notary Public of the State of
16 New York, pursuant to Subpoena and
17 stipulations between Counsel.

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19 * * *
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1 A. K Wise 7:00 a.m. at, abbreviated 10:04:37
2 station house. I, again underlined 10:04:43
3 because I'm referring to myself, not 10:04:46
4 quoting someone, I read rights card from 10:04:49
5 my wallet, Bill Murphy, not cuffed. 10:04:53
6 Q. Before you go on. Let's stop at 10:04:57
7 Bill Murphy. Those words that you're 10:05:00
8 writing here, did they involve information 10:05:04
9 you got from Kharey Wise or from the 10:05:07
10 officer? 10:05:10
11 A. These words were my own actions 10:05:11
12 at 7:00 a.m. on April 21st. 10:05:15
13 Q. So you read the rights? 10:05:21
14 A. Correct. 10:05:22
15 Q. To Kharey? 10:05:23
16 A. Correct. 10:05:24
17 Q. From what? 10:05:24
18 A. From the card from my wallet. 10:05:25
19 Q. What does Bill Murphy mean? 10:05:29
20 A. Bill Murphy was my second bureau 10:05:33
21 chief in the DA's office and trained us in 10:05:36
22 1973 always to carry in our wallets a card 10:05:40
23 containing the Miranda rights. 10:05:45
24 Q. So this is 7:00 a.m. at the 10:05:48
25 station house. Which station house? 10:05:50

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1	A.	24th Precinct.	10:05:52
2	Q.	This is on the 21st, right?	10:05:54
3	A.	Yes.	10:05:56
4	Q.	Who was present with Kharey at	10:05:57
5		that time?	10:06:01
6	A.	The detectives working with him.	10:06:01
7		I believe, well, Detective Sheehan was in	10:06:08
8		the immediate area around me, and Jonza	10:06:11
9		was, I don't know if Jonza was next to me	10:06:16
10		but nearby.	10:06:23
11		(Mr. Wareham entered the room.)	10:06:24
12	Q.	This is in the station house?	10:06:28
13	A.	Yes.	10:06:32
14	Q.	This is not in the park?	10:06:33
15	A.	Correct.	10:06:34
16	Q.	You went with Kharey to the	10:06:35
17		park?	10:06:37
18	A.	Yes.	10:06:37
19	Q.	Is this before you went to the	10:06:37
20		park?	10:06:39
21	A.	Yes.	10:06:39
22	Q.	Where was this, where in the	10:06:39
23		station house did this take place?	10:06:44
24	A.	In the squad room on the second	10:06:46
25		floor, I believe.	10:06:49

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1	Q.	Did you make any observations	10:06:49
2		about Kharey's physical condition?	10:06:58
3	A.	Yes.	10:07:00
4	Q.	Do you remember them now?	10:07:01
5	A.	I, in general, remember his	10:07:04
6		physical condition, yes, sir.	10:07:10
7		(Ms. Warren entered the room.)	10:07:11
8	Q.	What were they?	10:07:14
9	A.	He was alert, he appeared to be	10:07:15
10		comfortable. He had been offered food and	10:07:19
11		drink throughout the evening.	10:07:23
12	Q.	How did you know that?	10:07:26
13	A.	Because from time to time I'm	10:07:27
14		one of the people who ordered the food and	10:07:30
15		drink for the young men, for their	10:07:33
16		families, for the police officers, for my	10:07:38
17		colleagues.	10:07:40
18	Q.	Is this the first time you saw	10:07:40
19		Kharey?	10:07:42
20	A.	I might have seen him in the	10:07:43
21		hours before 7:00 a.m. This is the first	10:07:51
22		time I recall having a, being in close	10:07:55
23		proximity.	10:08:02
24	Q.	Did you see him at the 20th	10:08:03
25		Precinct?	10:08:06

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1	A.	I don't believe I did see him	10:08:06
2		there. I later learned he was there.	10:08:07
3	Q.	Go on reading the notes. Pick	10:08:10
4		up with not cuffed. What do you mean by	10:08:21
5		that?	10:08:23
6	A.	That he was never handcuffed for	10:08:24
7		this trip to the park, in the precinct or	10:08:27
8		in the park until after he was arrested	10:08:29
9		many hours later.	10:08:32
10	Q.	Why don't you read those three	10:08:33
11		lines.	10:08:36
12	A.	Okay. Not cuffed. In roadway	10:08:37
13		with Jonza and Sheehan and Kevin	10:08:41
14		Richardson.	10:08:44
15	Q.	Are those notes related to	10:08:46
16		events in the station house?	10:08:50
17	A.	No, in the park now.	10:08:54
18	Q.	Read the rest of the notes,	10:08:59
19		please.	10:09:04
20	A.	Pointed out where he was on ball	10:09:04
21		field and where, using his word in quotes,	10:09:07
22		snatched her.	10:09:15
23	Q.	Go on.	10:09:16
24	A.	Drove below, underlined, after	10:09:18
25		KR, arrow back to car.	10:09:25

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1 Q. What does that mean? 10:09:28

2 A. That the drove below refers to 10:09:30

3 the fact that the officers driving me in 10:09:35

4 the car drove from the roadway down to the 10:09:38

5 ravine. That's what drove below means. 10:09:43

6 After KR went back to the car 10:09:48

7 means that Kevin was the first of the two 10:09:51

8 young men the officers asked to get out of 10:09:55

9 the car. 10:09:58

10 Q. Kharey was asked to get out 10:10:00

11 afterwards, is that what it means? 10:10:02

12 A. Yes. 10:10:04

13 Q. What time of day did you go to 10:10:05

14 the park? 10:10:09

15 A. We left the precinct shortly 10:10:09

16 after 7:00 a.m. and were back by 8:00 a.m. 10:10:12

17 Q. You were driven there by a 10:10:17

18 police officer? 10:10:21

19 A. Yes. 10:10:21

20 Q. Which one? 10:10:21

21 A. It's my recollection, as I sit 10:10:22

22 here, that Detective Sheehan drove the car 10:10:27

23 and Detective Jonza was also in the car. 10:10:31

24 Q. Were you all in the same car 10:10:33

25 with Kharey and Kevin? 10:10:35

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1	A.	That's my recollection. I could	10:10:37
2		be mistaken.	10:10:38
3	Q.	Read on.	10:10:39
4	A.	Mike Sheehan and August Jonza.	10:10:40
5		Mike Sheehan, I'm sorry, to Mike Sheehan,	10:10:47
6		T-O, to August Jonza, quote, send Kharey	10:10:51
7		up - walked over alone, meaning Kharey	10:10:55
8		walked alone.	10:11:01
9		(Mr. Warren entered the room.)	10:11:01
10	Q.	Over to?	10:11:04
11	A.	To the area where Sheehan and I	10:11:05
12		were.	10:11:08
13	Q.	The next paragraph starting with	10:11:08
14		looked down, I can read, is this your	10:11:14
15		recording of what you --	10:11:20
16		MR. BELDOCK: Withdrawn.	10:11:22
17	Q.	Is this your recording of what	10:11:22
18		you understood Kharey to have said?	10:11:25
19	A.	Yes.	10:11:27
20	Q.	Where was he when you made these	10:11:29
21		comments?	10:11:32
22	A.	The car had parked in the ravine	10:11:33
23		and we were standing, I would say,	10:11:37
24		approximately a third of the way up from	10:11:43
25		the stream in the ravine to the roadway.	10:11:48

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1 So when I say up, it's actually south, but 10:11:51
2 uphill from the stream. And that's where 10:11:54
3 Kharey walked to us. 10:12:00
4 Q. The last line on the page says 10:12:03
5 Channel 5/TV, TV what? 10:12:09
6 A. Crew. 10:12:11
7 Q. Where were they? 10:12:12
8 A. They were, a car drove up on the 10:12:13
9 roadway and reporters got out of the car 10:12:18
10 and started to walk in the direction of 10:12:24
11 the ravine. 10:12:29
12 Q. The second page also has to do 10:12:31
13 with the events relating to the visit to 10:12:35
14 the park? 10:12:37
15 A. Yes. 10:12:38
16 Q. At least the first section? 10:12:38
17 A. Yes. 10:12:42
18 Q. Who gives the information that 10:12:43
19 you record here starting with on car, in 10:12:46
20 car on way back, took us past scaffolding 10:12:51
21 on Central Park West, that's where Antron, 10:12:55
22 with a pipe, was breaking light bulbs? 10:13:01
23 A. Kharey Wise. 10:13:03
24 Q. Was Kevin in the same car as you 10:13:05
25 drove back? 10:13:09

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1	A.	Yes.	10:13:10
2	Q.	Were there any other persons	10:13:10
3		present with your group, Sheehan, Jonza,	10:13:20
4		Kevin and Kharey in the visit to the park?	10:13:25
5	A.	There may have been another car	10:13:30
6		with police officers in it. I don't	10:13:34
7		believe there were any other civilians,	10:13:37
8		but I don't remember talking to anyone in	10:13:41
9		another car. There were, there was a	10:13:44
10		uniformed police officer, at least one if	10:13:48
11		not two, on the roadway in the park when	10:13:50
12		we arrived.	10:13:54
13	Q.	Am I correct that this visit to	10:13:55
14		the park took place after the video	10:13:57
15		statements of Kharey and Kevin?	10:14:02
16	A.	I believe the visit to the park	10:14:04
17		took place after the video statement of	10:14:06
18		Kevin Richardson and, as I sit here today,	10:14:09
19		my recollection is that Kharey Wise had	10:14:14
20		made two written statements at that point,	10:14:17
21		or a written statement but had not yet	10:14:24
22		been videotaped.	10:14:27
23	Q.	Kevin was being questioned and	10:14:31
24		was giving information while at the visit	10:14:33
25		to the park and in the car.	10:14:36

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1 A. He was not being questioned at 10:14:40
2 all in the car. The only questions, as we 10:14:42
3 told him and we told Mr. Richardson, his 10:14:44
4 father, were to ask him to put the 10:14:54
5 locations he'd talked about in his 10:14:57
6 statement together with their actual 10:14:59
7 place, physical place in the park. 10:15:04

8 Q. Remind me again when you took 10:15:05
9 these notes. 10:15:09

10 A. I believe I wrote these notes 10:15:10
11 after 11 o'clock on the 21st into the 10:15:13
12 early morning hours of the 22nd. 10:15:16

13 Q. Do any of these notes relate to 10:15:18
14 Kevin Richardson having made any 10:15:30
15 observations at the scene? 10:15:33

16 A. Not in these notes, no. 10:15:35

17 Q. Pardon me? 10:15:46

18 A. Not in these two pages, no. 10:15:47

19 Q. And there are no statements on 10:15:51
20 these two pages about anything that Kevin 10:15:54
21 said at the scene, right? 10:15:56

22 A. In these two pages, that's 10:15:58
23 correct. 10:16:01

24 Q. The next note on page 1018 is 10:16:01
25 made about the events of your observations 10:16:11

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1	of the cell?	10:16:15
2	A. In the cell.	10:16:16
3	Q. Read them to us, please.	10:16:17
4	A. Okay. 10:30 p.m. in large cell.	10:16:19
5	MS. DAITZ: I think you read	10:16:28
6	that wrong.	10:16:29
7	Q. In large pen?	10:16:30
8	A. In large pen.	10:16:33
9	Q. Go on.	10:16:34
10	A. Defendants standing against	10:16:35
11	right wall.	10:16:37
12	Q. Which defendant are you	10:16:38
13	referring to?	10:16:39
14	A. Kharey Wise.	10:16:40
15	(A woman entered the room.)	10:16:41
16	Q. Go on.	10:16:44
17	A. Here I quote him, I put quote	10:16:45
18	marks around him. Did you tell them about	10:16:50
19	the guy who said do you want to race. A	10:16:52
20	voice came from within the cell. I	10:16:58
21	couldn't -- Kharey Wise was closest to	10:17:00
22	where I was standing. And the person	10:17:04
23	responded, one person responded yeah, and	10:17:08
24	Wise said I did too, that was really	10:17:11
25	funny, end quote.	10:17:15

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1 And then everybody sounded, it 10:17:16
2 sounded as though everybody in the cell 10:17:21
3 began to laugh. 10:17:23

4 Q. How long were you observing the 10:17:24
5 defendants in the cell? 10:17:26

6 A. I was not observing them. I 10:17:27
7 came out of the office I'd been given to 10:17:29
8 work in to make phone calls in to get a 10:17:33
9 telephone book that was in a desk drawer 10:17:38
10 eight or ten feet from that cell. And as 10:17:43
11 I came out, this conversation happened. 10:17:46

12 Q. When did you write this 10:17:51
13 conversation down? 10:17:53

14 A. Before leaving the station house 10:17:55
15 that night, the next day. 10:17:56

16 Q. The next page has to do with 10:18:00
17 notes regarding Kevin Richardson, correct? 10:18:02

18 A. Yes. 10:18:04

19 Q. This is 1019. It says 7:00 a.m. 10:18:05
20 Does that refer to the time at the 10:18:09
21 precinct or at the park? 10:18:11

22 A. At the precinct. 10:18:13

23 Q. And then it reads with Mike 10:18:13
24 Sheehan and August Jonza to scene, 10:18:18
25 correct? 10:18:23

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1	A.	Correct.	10:18:23
2	Q.	And it says with Kevin	10:18:23
3		Richardson and Wise, and then it says	10:18:26
4		rights at station house.	10:18:29
5	A.	Yes.	10:18:30
6	Q.	What does that refer to?	10:18:31
7	A.	That, combined with the next	10:18:32
8		line, says that Detective Sheehan at the	10:18:37
9		station house read rights to Kevin	10:18:41
10		Richardson.	10:18:45
11	Q.	Going down the page, I think	10:18:46
12		it's readable. Well, having said that, I	10:18:49
13		can't read the first two. Is that	10:18:58
14		defendant at scene?	10:19:00
15	A.	At scene out of car.	10:19:02
16	Q.	Not cuffed?	10:19:04
17	A.	Not cuffed.	10:19:05
18	Q.	Why did you underline not	10:19:05
19		cuffed?	10:19:09
20	A.	Because it was quite unusual in	10:19:10
21		my experience to take a suspect out of a	10:19:14
22		station house, and this was being done	10:19:19
23		because of the concern and the fact that	10:19:23
24		these were young men.	10:19:25
25	Q.	This is Kevin being taken to the	10:19:28

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1 scene after his statement, right? 10:19:34

2 A. I believe Kevin had already made 10:19:37

3 his videotape, yes. 10:19:40

4 Q. And except for possibly Kharey, 10:19:41

5 to your memory, had not been thoroughly or 10:19:44

6 completely interviewed on video, this was 10:19:50

7 after all the other statements were taken, 10:19:53

8 right? 10:19:55

9 MS. DAITZ: Objection to form. 10:19:55

10 Q. I mean, other statements taken 10:19:56

11 from other suspects who became defendants. 10:19:58

12 A. All the other statements is what 10:20:01

13 you asked me. By no means had all the 10:20:02

14 other statements been taken. 10:20:05

15 Q. Which ones weren't taken? 10:20:06

16 A. I'm not sure as we sit here. 10:20:08

17 Q. Did you go to the scene because 10:20:10

18 you had some question about the 10:20:12

19 reliability or the accuracy of what 10:20:15

20 various other suspects had said about the 10:20:18

21 location of the rape? 10:20:22

22 MS. DAITZ: Objection to form. 10:20:23

23 A. No. 10:20:25

24 Q. Did you know that different 10:20:25

25 statements had been made by the various 10:20:35

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1 defendants about the location of the rape? 10:20:37

2 A. At that point in time, I was not 10:20:40

3 aware of any significant discrepancies in 10:20:43

4 the location of the rape. 10:20:50

5 Q. Do you know any reason why 10:20:58

6 Kevin's family member, his father or 10:21:00

7 whoever else was present, did not come to 10:21:04

8 the scene to be there with him? 10:21:07

9 A. Yes. 10:21:09

10 Q. What was that? 10:21:10

11 A. I talked to his father, Paul 10:21:10

12 Richardson. I was introduced to his 10:21:12

13 father. I told him, told Mr. Richardson 10:21:14

14 that the police would like to take Kevin 10:21:19

15 to the scene. I told him the purpose for 10:21:22

16 which we wanted to take him to the scene 10:21:26

17 and that he, Paul Richardson, had a right 10:21:28

18 to go with Kevin because of his age. 10:21:32

19 And Mr. Richardson told me he 10:21:36

20 didn't want to go. And his only question 10:21:39

21 was, are you bringing Kevin back here to 10:21:42

22 me, will I see him again. And the 10:21:46

23 detectives said yes. 10:21:50

24 Q. The next note on that same page 10:21:52

25 reads on roadway, quote, this is where we 10:21:59

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CERTIFICATION

I, Alice Schulman, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 30th day of April 2013.



ALICE SCHULMAN

* * *

EXHIBIT 3

Page 1

RE: In re: McCRAY, RICHARDSON,
SANTANA, WISE
and SALAAM Litigation,

Docket No. 03 CV 9685 (DAB) (RLE)

99 Park Avenue
New York, New York
April 23, 2013
10:06 a.m.

EXAMINATION BEFORE TRIAL of LINDA
FAIRSTEIN, a Defendant in the
above-entitled action, held at the above
time and place, taken before Alice
Schulman, a Notary Public of the State of
New York, pursuant to Notice and
stipulations between Counsel.

* * *

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1	people there, both my colleagues and	10:59:32
2	police.	10:59:34
3	Q. Were you --	10:59:35
4	MR. BELDOCK: Withdrawn.	10:59:40
5	Q. During the two criminal trials	10:59:44
6	in this case, was Mr. Sheehan often at the	10:59:46
7	District Attorney's office?	10:59:52
8	A. I have no idea.	10:59:53
9	Q. Did you know that while Ms.	10:59:54
10	Lederer and Mr. Clements were working in	11:00:07
11	the criminal trials, that is in	11:00:13
12	preparation for the trials and the actual	11:00:15
13	trials and hearings, that Sheehan had a	11:00:18
14	special assignment to the office to assist	11:00:23
15	them?	11:00:25
16	A. I did not know that.	11:00:25
17	Q. Did you know whether any New	11:00:27
18	York City Police detectives were assigned	11:00:33
19	to assist Lederer and/or Clements in	11:00:35
20	preparation for and prosecution of the	11:00:39
21	defendants in the two criminal trials?	11:00:43
22	MS. DAITZ: Objection to form.	11:00:45
23	Q. You can answer.	11:00:46
24	A. During which period of time?	11:00:47
25	Q. During the time of the	11:00:49

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1 preparation for the criminal trials and 11:00:51
2 the trials, 1989 to 1990. 11:00:52

3 A. All of, from April of 1989 11:00:56
4 through the conclusion of the trial? 11:01:00

5 Q. I'm talking about special 11:01:02
6 assignments -- 11:01:07

7 MR. BELDOCK: I'll withdraw the 11:01:09
8 word special. 11:01:10

9 Q. I'm talking about detectives who 11:01:10
10 were assigned to assist Lederer and 11:01:12
11 Clements in preparation for the trial, 11:01:15
12 trials, plural, and prosecution of the 11:01:19
13 defendants. 11:01:24

14 MS. DAITZ: Objection to form. 11:01:24
15 You can answer. 11:01:26

16 A. The reason I asked you to tell 11:01:27
17 me what time period is that in any felony 11:01:29
18 trial, there is a period, any and every 11:01:32
19 felony trial, there is a period when 11:01:38
20 officers are assigned to the courthouse to 11:01:41
21 work on the preparation for trial. 11:01:44

22 So, yes, I assume that happened 11:01:47
23 with this case, but I don't know in what 11:01:50
24 period. You're not being specific. 11:01:52

25 Q. The trials took place in 1990, 11:01:54

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1 both of them, or '90 and '91? 11:01:58

2 A. I believe '90 and '91. 11:02:00

3 Q. Let's take 1990 and '91. Were 11:02:02

4 you aware that certain detectives were 11:02:05

5 assigned to assist Lederer and Clements in 11:02:09

6 preparation for the prosecution of those 11:02:15

7 trials and during the prosecution of those 11:02:17

8 trials? 11:02:20

9 A. To answer your question, 11:02:20

10 perhaps -- to make it clear, I was a 11:02:24

11 witness in those trials. So I was not 11:02:26

12 allowed or I was not supervising the 11:02:29

13 day-to-day management of Ms. Lederer's 11:02:33

14 assignments. That would not have been 11:02:36

15 appropriate. 11:02:38

16 Secondly, we worked in entirely 11:02:39

17 separate buildings. She in 80 Centre 11:02:41

18 Street, my office in 100 Centre Street. 11:02:44

19 So I didn't see on a daily basis who was 11:02:47

20 coming and going from her office. 11:02:50

21 And third, I would have to -- 11:02:54

22 it's no surprise to me that officers were 11:02:55

23 assigned for preparation for trial in any 11:02:58

24 case like this one. I would just have to 11:03:02

25 know what dates, but it would not surprise 11:03:05

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Linda Fairstein

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1	me.	11:03:08
2	Q. But you were in their presence	11:03:08
3	when any detectives were assisting on a	11:03:12
4	regular matter, regular basis, Clements	11:03:14
5	and Lederer in the prosecution from 1990	11:03:18
6	and 1991?	11:03:22
7	MS. DAITZ: Objection to form.	11:03:23
8	A. At almost no time was I present	11:03:25
9	with them for the preparation of their	11:03:28
10	case for trial.	11:03:30
11	Q. You just said you were only a	11:03:30
12	witness; is that correct?	11:03:32
13	A. I didn't say only a witness. I	11:03:33
14	said I was a witness.	11:03:35
15	Q. And because you were a witness,	11:03:37
16	you were not involved in the preparation	11:03:38
17	for the trial?	11:03:40
18	A. In most of the preparation for	11:03:41
19	the trial, and things like detective	11:03:43
20	assignments would not have been my issue.	11:03:44
21	Q. And since you were a witness,	11:03:47
22	are you saying you were not involved in	11:03:49
23	assisting Lederer in prosecution?	11:03:51
24	MS. DAITZ: Objection to form.	11:03:54
25	A. If you would ask me questions	11:03:57

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1	specifically about what aspects of	11:03:59
2	prosecution, I would be happy to try and	11:04:02
3	answer. Not overall prosecution, no.	11:04:04
4	Q. All right. You understand, I'm	11:04:07
5	asking these questions based on your	11:04:10
6	statement that you were a witness and you	11:04:12
7	weren't involved in the participation of	11:04:14
8	the prosecution. Do I understand you	11:04:16
9	correctly?	11:04:18
10	MS. DAITZ: I object to the	11:04:18
11	characterization of the witness's	11:04:19
12	testimony.	11:04:21
13	Q. What do you mean by you were	11:04:21
14	only a witness?	11:04:23
15	MR. BELDOCK: Withdrawn.	11:04:24
16	Q. What do you mean by the fact	11:04:24
17	that you were a witness and therefore you	11:04:26
18	did not participate?	11:04:27
19	A. You keep saying only a witness.	11:04:29
20	Q. I took out only.	11:04:32
21	A. Okay.	11:04:33
22	Q. Okay. You said you were a	11:04:33
23	witness and therefore you were not	11:04:35
24	involved in the preparation for the case?	11:04:37
25	MS. DAITZ: Objection.	11:04:40

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Linda Fairstein

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1 A. In the preparation with 11:04:41
2 detectives for the trial of the case. So 11:04:43
3 she did not have to come to me to get 11:04:45
4 permission to assign detectives for daily 11:04:48
5 work with her. 11:04:52
6 Q. Were you involved in assisting 11:04:53
7 Ms. Lederer and/or Mr. Clements in any way 11:04:56
8 in the preparation for the trials and the 11:05:02
9 prosecutions themselves? 11:05:06
10 A. In some respects, yes. 11:05:10
11 Q. In what respects? 11:05:14
12 A. If Ms. Lederer wanted to discuss 11:05:16
13 an issue with me or a matter with me, she 11:05:21
14 would call me and we met. 11:05:24
15 I don't believe I ever met with 11:05:27
16 Mr. Clements in the preparation of the 11:05:29
17 case for trial. That's a strong statement 11:05:31
18 ever. I don't recall meeting with Mr. 11:05:33
19 Clements during the preparation for either 11:05:37
20 trial. 11:05:41
21 Q. Can you tell us who the lawyers 11:05:41
22 were who were involved in the team that 11:05:45
23 prosecuted the defendants outside of 11:05:49
24 Lederer and Clements? 11:05:52
25 A. Okay. Yes. The layers of 11:05:53

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Linda Fairstein

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1	supervision included Ms. Lederer's three	11:06:03
2	Trial Bureau 40 supervisors.	11:06:07
3	Q. Who?	11:06:09
4	A. John Hogan was the bureau chief	11:06:10
5	in Trial Bureau 40. And also a former	11:06:13
6	member of the Sex Crimes Prosecution Unit.	11:06:18
7	Dan McNulty was, I believe, charged with	11:06:22
8	much of the supervision direct on a daily	11:06:28
9	basis for Ms. Lederer and Mr. McNulty. He	11:06:32
10	was their Deputy Bureau Chief in Trial	11:06:36
11	Bureau 40. I believe the Second Deputy	11:06:41
12	was Mr. Cronin, Steve Cronin.	11:06:43
13	Q. Can you spell that?	11:06:45
14	A. C-R-O-N-I-N.	11:06:45
15	Q. Go on.	11:06:48
16	A. And then I was, in the sense of	11:06:49
17	the sex crimes work, a supervisor. The	11:06:59
18	chief of the Trial Division to whom I	11:07:02
19	reported was also in the supervisory role	11:07:04
20	in this case.	11:07:09
21	Q. Who was that?	11:07:10
22	A. It was at first John Fried when	11:07:11
23	the case was assigned in April 1989. He	11:07:16
24	left the office, a date you can ascertain	11:07:22
25	but probably 1990, replaced by Nancy Ryan	11:07:28

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Linda Fairstein

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1	who was then a supervisor.	11:07:32
2	And then up the chain of	11:07:37
3	command, the Chief Assistant District	11:07:39
4	Attorney and Mr. Morgenthau himself.	11:07:41
5	Q. Did you ever talk to Mr.	11:07:44
6	Morgenthau during the period this case was	11:07:47
7	pending before the convictions about	11:07:49
8	anything having to do with the charges,	11:07:51
9	the indictments and the prosecution?	11:07:56
10	MS. DAITZ: Objection to form.	11:07:58
11	A. Did I ever speak?	11:08:00
12	Q. In that period of time.	11:08:03
13	A. In the period of time from April	11:08:05
14	20, 1989 --	11:08:07
15	Q. Right.	11:08:09
16	A. -- to the convictions?	11:08:09
17	Q. Right.	11:08:11
18	A. Frequently.	11:08:12
19	Q. Did you talk about issues in the	11:08:13
20	case with him?	11:08:15
21	A. Yes, I did.	11:08:16
22	Q. How often?	11:08:17
23	A. Well, in what period of time?	11:08:18
24	Q. In that period of time.	11:08:22
25	A. It varied from the morning of	11:08:24

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1 April 20th for a month or six weeks, he 11:08:28
2 called me into him several times a day 11:08:34
3 every day. There were periods where we 11:08:37
4 didn't speak as frequently. 11:08:43
5 He asked me, I was the person 11:08:47
6 who he called in this particular case. He 11:08:50
7 expected me to give him information from 11:08:55
8 Ms. Lederer and her team that were updates 11:08:58
9 of any kind. So I saw him during that 11:09:01
10 period. And more frequently during the 11:09:05
11 hearings of the case and the trial. 11:09:09
12 Q. If I can remember correctly, in 11:09:13
13 your answer, maybe an answer or so ago, 11:09:23
14 you said something about your assisting in 11:09:26
15 the sex crime aspects of the prosecution. 11:09:28
16 What did you mean by that? 11:09:32
17 A. As you are well aware, there 11:09:33
18 were many charges in this case. And in 11:09:38
19 addition to the five plaintiffs in this 11:09:43
20 case, there were many offenders charged 11:09:44
21 with acts not related to a sexual assault 11:09:50
22 but to physical assaults and to riot, and 11:09:55
23 many of them ultimately to be charged in 11:09:58
24 Juvenile Court. 11:10:01
25 And for all of those issues, Ms. 11:10:04

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1	Lederer regularly got assistance from Mr.	11:10:09
2	McNulty who sat an office or two away from	11:10:15
3	her, and was in the chain of command her	11:10:18
4	direct supervisor.	11:10:20
5	Q. Are you telling us that you did	11:10:22
6	not supervise any aspects of the	11:10:24
7	prosecution?	11:10:27
8	MS. DAITZ: Objection to form.	11:10:27
9	(Mr. Warren entered the room.)	11:10:29
10	A. That's not what I said.	11:10:32
11	MR. BELDOCK: Michael Warren has	11:10:34
12	just joined us. If we can find him a	11:10:37
13	chair. Mr. Warren is an attorney for the	11:10:40
14	McCray, Richardson and Santana defendants,	11:10:43
15	former defendants, now plaintiffs.	11:10:47
16	MR. WARREN: I, as a practical	11:10:51
17	matter with deep regret, I will sit on the	11:10:53
18	side over here.	11:10:54
19	MR. BELDOCK: While Mr. Warren	11:10:58
20	is seated, I want to get a document for a	11:11:00
21	moment. Don't go off the record.	11:11:03
22	MS. DAITZ: Myron, is there any	11:11:28
23	way to adjust the temperature?	11:11:34
24	MS. FISHER-BYRIALSEN: I did.	11:11:35
25	Do you want it hotter or colder?	11:11:37

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Linda Fairstein

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1	MR. BELDOCK: If you would mark	11:11:40
2	this, please.	11:12:06
3	I have to apologize. I need to	11:12:46
4	have copies of this made. Karin, I'd like	11:12:48
5	an unmarked copy. Can you help me find	11:12:51
6	one?	11:12:54
7	MS. DIPPOLD: Okay.	11:12:57
8	MR. BELDOCK: Six copies, seven	11:13:00
9	copies.	11:13:02
10	MS. DIPPOLD: Okay.	11:13:03
11	MR. BELDOCK: I'm sure she will	11:13:34
12	be back in a minute. Let me go on and ask	11:13:36
13	a question.	11:13:39
14	Q. Where was your office in 1989,	11:13:40
15	1990, 1991, the same place?	11:13:45
16	A. Through those years?	11:13:47
17	Q. Yes.	11:13:50
18	A. It was in the same place which	11:13:50
19	was the eighth floor of the One Hogan	11:13:53
20	Place/100 Centre Street building on a	11:14:00
21	corridor with the chief of the Trial	11:14:05
22	Division. And I was a Deputy Chief of the	11:14:08
23	Trial Division, and there were two other	11:14:11
24	Deputy Chiefs of the Trial Division.	11:14:13
25	Q. Where was Ryan's office?	11:14:16

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Linda Fairstein

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1	A.	When?	11:14:19
2	Q.	During that period of time.	11:14:20
3	A.	In 1989 when this case occurred,	11:14:22
4		I have no idea where her office was.	11:14:25
5	Q.	Where was Lederer's office?	11:14:28
6	A.	In 1989 when this case occurred,	11:14:29
7		she was across the street in the building	11:14:32
8		that's 80 Centre Street within the offices	11:14:36
9		of Trial Bureau 40.	11:14:38
10	Q.	Is that where Clements had his	11:14:40
11		office also at that time?	11:14:43
12	A.	Yes, it is.	11:14:44
13	Q.	While we're waiting for that	11:14:45
14		copy, let me go out of order and just fill	11:15:25
15		in some time. I don't want to lose any	11:15:28
16		time.	11:15:32
17		I'm giving you exhibit,	11:15:33
18		Fairstein No. 4. Do you recognize the	11:15:52
19		handwriting on this document? And take a	11:15:58
20		moment, of course, to look at it.	11:16:00
21	MS. DAITZ:	For the record, this	11:16:02
22		is a multi-page document bearing Bates	11:16:03
23		stamped numbers NYC042297, 98, 99, 300 and	11:16:06
24		301.	11:16:12
25	A.	Yes, I've examined these five	11:16:37

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Linda Fairstein

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1	pages.	11:16:41
2	Q. Do you recognize the	11:16:41
3	handwriting?	11:16:42
4	A. I do.	11:16:42
5	Q. Whose is it?	11:16:43
6	A. Elizabeth Lederer's.	11:16:45
7	Q. Back at the time of the criminal	11:16:48
8	prosecution, did you see this document?	11:16:50
9	MR. BELDOCK: I'll withdraw	11:16:55
10	that.	11:16:56
11	Q. Did you see these notes at the	11:16:56
12	time of the criminal prosecution?	11:16:59
13	A. As I sit here today, I simply	11:17:00
14	cannot remember whether I saw these hand	11:17:03
15	notes.	11:17:06
16	Q. Did you see notes with the	11:17:07
17	subject matter at the time of the	11:17:09
18	prosecution?	11:17:11
19	MS. DAITZ: Notes, I'm sorry?	11:17:11
20	MR. BELDOCK: With the subject	11:17:14
21	matters.	11:17:14
22	Q. As you can see on each page, I	11:17:15
23	think there are identifying names.	11:17:18
24	A. But, sir, at any point in time	11:17:26
25	between '89 and '91? I just don't	11:17:30

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Linda Fairstein

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1 understand the time of your question. 11:17:33

2 Q. Let's take the time before the 11:17:34

3 charges were made. Did you see these 11:17:40

4 notes? 11:17:43

5 A. I don't remember. I can't say 11:17:43

6 that I didn't, but I don't know when they 11:17:46

7 were made by Ms. Lederer. And as I sit 11:17:47

8 here today, I don't recall. 11:17:50

9 Q. When you and Ms. Lederer first 11:17:52

10 got to the 20th Precinct, that was on 11:17:55

11 April 20th, right? 11:17:57

12 A. Yes, it was. 11:17:59

13 Q. One of the first things that 11:18:00

14 happened there -- 11:18:03

15 MR. BELDOCK: Withdrawn. 11:18:03

16 Q. Was one of the first things that 11:18:04

17 happened there a police briefing? 11:18:06

18 A. On the evening of the 20th, yes, 11:18:09

19 I attended a short police briefing. 11:18:13

20 Q. And how short, what do you mean 11:18:15

21 by short? 11:18:18

22 A. Less than half an hour. 11:18:19

23 Q. During that period of time, did 11:18:20

24 you see Ms. Lederer take any notes? 11:18:22

25 A. I don't remember that. 11:18:24

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Linda Fairstein

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1 Q. Did you take any notes? 11:18:25

2 A. I did not. 11:18:27

3 Q. Now, here's the document I 11:18:27

4 wanted to ask you about before that we had 11:18:40

5 copied. 11:18:45

6 MR. BELDOCK: Would you mark it, 11:18:45

7 please. 11:18:46

8 (Five-page memorandum was hereby 11:18:46

9 marked as Fairstein Exhibit 9 for 11:18:46

10 identification, as of this date.) 11:12:39

11 Q. Exhibit 9 before you, it is a -- 11:19:15

12 MS. DAITZ: Exhibit, did you say 11:19:27

13 it's Exhibit 9? 11:19:32

14 MS. FISHER-BYRIALSEN: Five. 11:19:32

15 MR. BELDOCK: Yes, there are 11:19:32

16 other documents. 11:19:48

17 MS. DAITZ: So we're going out 11:19:48

18 of order then, and this will be Fairstein 11:19:49

19 9? 11:19:52

20 MR. BELDOCK: I go out of order 11:19:52

21 all the time. 11:19:53

22 Q. This is a file memo from our 11:19:56

23 firm which has indicated this -- all the 11:19:59

24 references to you from the original 11:20:05

25 privileged and redaction logs provided by 11:20:11

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Linda Fairstein

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1 Corporation Counsel to plaintiffs' counsel 11:20:14
2 in this case. These are obviously 11:20:17
3 excerpts from a greater privileged log. 11:20:23
4 Now, I want to inquire of you 11:20:27
5 about your answer, about your limited role 11:20:30
6 in the preparation and prosecution of the 11:20:35
7 case because you were a witness. Am I 11:20:38
8 right you had a limited role because you 11:20:41
9 were a witness? 11:20:43
10 MS. DAITZ: You know what, 11:20:45
11 before you go on to the questioning, I 11:20:47
12 just want to note for the record that in 11:20:49
13 some respects this is not an accurate 11:20:52
14 reproduction of the privileged and 11:20:56
15 redaction logs in this case, and in other 11:20:57
16 cases, many of these documents have since 11:21:00
17 been produced since they appeared on 11:21:03
18 privileged and redaction logs. 11:21:05
19 MR. BELDOCK: It indicates on 11:21:06
20 the document they were produced. 11:21:07
21 MS. DAITZ: Well, in connection 11:21:08
22 with the work product briefing when we 11:21:10
23 reproduced certain documents -- 11:21:12
24 MR. BELDOCK: The log is 11:21:16
25 correct, we believe. The documents that 11:21:18

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NYCLD_038935

Linda Fairstein

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1	have been produced, which were on the	11:21:22
2	original log are indicated to be produced	11:21:24
3	on the right, and where they're not	11:21:27
4	indicated that they were produced, then	11:21:28
5	they are still being kept back by the work	11:21:30
6	product privilege. That's not my concern.	11:21:35
7	MS. DAITZ: Okay. I'm just	11:21:37
8	saying that I don't know that the	11:21:38
9	representation on this chart is	11:21:38
10	necessarily accurate.	11:21:40
11	MR. BELDOCK: Well, we believe	11:21:41
12	it is.	11:21:42
13	MS. DAITZ: And there were two	11:21:42
14	corrections that were made last week as	11:21:44
15	well.	11:21:45
16	MR. BELDOCK: I think that's	11:21:46
17	irrelevant to what I'm asking.	11:21:47
18	MS. DAITZ: Okay. I'm just	11:21:48
19	making sure that the record is clear.	11:21:50
20	Q. Ms. Fairstein, you said you were	11:21:53
21	a witness, and therefore that limited your	11:21:55
22	participation in the prosecution. Is that	11:21:57
23	a fair summary of what you said?	11:21:59
24	A. In some aspects of the	11:22:00
25	prosecution, like the preparation for	11:22:03

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NYCLD_038936

Linda Fairstein

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1	trial question that you asked me earlier.	11:22:07
2	Q. What does that mean?	11:22:11
3	A. That I was not doing the	11:22:12
4	day-to-day supervision such as determining	11:22:17
5	which detectives, that was your area of	11:22:22
6	questioning, would be assigned for the	11:22:25
7	purpose of that prosecution.	11:22:28
8	MR. BELDOCK: Withdrawn.	11:22:36
9	MS. FISHER-BYRIALSEN: Myron, we	11:22:40
10	need to take a break.	11:22:42
11	MR. BELDOCK: Excuse me?	11:22:42
12	MS. FISHER-BYRIALSEN: He needs	11:22:44
13	to switch the tape.	11:22:44
14	MR. BELDOCK: Now?	11:22:46
15	MS. FISHER-BYRIALSEN: Well,	11:22:46
16	yes.	11:22:48
17	MR. BELDOCK: I see there are	11:22:48
18	five minutes left.	11:22:49
19	MS. FISHER-BYRIALSEN: Well,	11:22:51
20	that was a while ago that that note was	11:22:51
21	sent, the message.	11:22:55
22	MR. BELDOCK: Stop the tape.	11:22:55
23	We'll start after the tape has been	11:22:55
24	switched.	11:22:56
25	THE VIDEOGRAPHER: This marks	11:22:56

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Linda Fairstein

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1	the end of tape No. 1 in the videotaped	11:22:57
2	deposition of Linda Fairstein. We are	11:23:00
3	going off the record. The time is 11:22.	11:23:02
4	(A recess was taken.)	11:30:47
5	THE VIDEOGRAPHER: This marks	11:30:47
6	the beginning of tape No. 2 in the	11:33:17
7	videotaped deposition of Linda Fairstein.	11:33:20
8	We are going on the record. The time is	11:33:23
9	11:33.	11:33:25
10	Q. Ms. Fairstein, have you had an	11:33:27
11	opportunity to review Exhibit 9?	11:33:29
12	A. To review it, read it, no.	11:33:34
13	Q. Would you just kind of look	11:33:36
14	through it without reading every word --	11:33:42
15	A. That's hard to do.	11:33:44
16	Q. -- so you can get a sense of the	11:33:45
17	subject matters that are involved in this	11:33:47
18	exhibit.	11:33:50
19	A. (Witness complies.) I have	11:34:31
20	skimmed this document.	11:35:17
21	Q. You see the scope of the subject	11:35:19
22	matter, right?	11:35:22
23	A. Yes.	11:35:22
24	Q. These are documents that were	11:35:23
25	originally on the privileged log, some of	11:35:26

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Linda Fairstein

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1 which remain on the privileged log and 11:35:31
2 some of which have since been produced to 11:35:33
3 us. You understand that? 11:35:35
4 A. Yes, sir. 11:35:36
5 Q. Do you see that they all have to 11:35:37
6 do with your involvement in one or another 11:35:40
7 aspect of the prosecutions? 11:35:43
8 MS. DAITZ: Objection to form. 11:35:46
9 A. Before I answer that, may I ask, 11:35:49
10 this appears to be from you, prepared by 11:35:53
11 you. 11:35:56
12 Q. No, it is excerpted from what 11:35:56
13 Corporation Counsel has prepared. If it 11:35:59
14 was prepared by me, I may say I'd have 11:36:02
15 more information but it's not. 11:36:04
16 A. This says from Myron Beldock. 11:36:06
17 Q. That's our file memo repeating 11:36:10
18 the Corporation Counsel's privileged log 11:36:13
19 information. 11:36:16
20 A. Okay. And so may I ask, in 11:36:16
21 column two, the wide column where it says, 11:36:19
22 for example, on the first one ADA 11:36:23
23 Fairstein handwritten arraignment prep 11:36:25
24 sheet, who wrote the -- 11:36:29
25 Q. That's information given by 11:36:29

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Linda Fairstein

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1	Corporation Counsel to plaintiffs'	11:36:32
2	counsel.	11:36:33
3	A. As such.	11:36:33
4	Q. None of this information below	11:36:34
5	the line that reads from original	11:36:36
6	privileged and redaction logs came from	11:36:39
7	plaintiffs' counsel. It was given to	11:36:41
8	plaintiffs' counsel by defendants' counsel	11:36:43
9	in this lawsuit.	11:36:44
10	A. With this description?	11:36:46
11	Q. With this description. As you	11:36:47
12	can see, it doesn't have dates.	11:36:48
13	A. Okay.	11:36:48
14	Q. I don't mean D-A-I-T-Z, I mean	11:36:51
15	D-A-T-S.	11:36:54
16	A. Got it, thank you.	11:36:54
17	MS. FISHER-BYRIALSEN: T-E-S.	11:36:54
18	MR. BELDOCK: My spelling is not	11:37:01
19	the best.	11:37:02
20	MS. DAITZ: Gee, I never heard	11:37:04
21	that before.	11:37:05
22	Q. So, do you recognize from this	11:37:06
23	list that you were involved in aspects of	11:37:09
24	the prosecution from, according to this	11:37:12
25	list, from the arraignment on through to	11:37:16

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Linda Fairstein

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1	the voir dieres, the summations, the	11:37:25
2	witnesses and so on?	11:37:29
3	MS. DAITZ: Object to form.	11:37:32
4	A. The only reason, without being	11:37:34
5	difficult, I can't accept your	11:37:38
6	characterization is because I see from	11:37:40
7	some of these descriptions that there's	11:37:42
8	confusion somewhere, because I did not	11:37:45
9	prepare a lot of these things.	11:37:47
10	Q. How do you know?	11:37:50
11	A. Well, I know, for example, there	11:37:53
12	are names of people I've never heard of,	11:37:57
13	and I don't believe I had anything to do	11:38:01
14	with their interviews.	11:38:03
15	I know, for example, when it's	11:38:06
16	about someone's cross-examination, notes	11:38:08
17	on someone's cross-examination, I was not	11:38:11
18	allowed by order of Judge Galligan to be	11:38:14
19	in the court because I was a witness when	11:38:18
20	other witnesses were testifying.	11:38:20
21	So some of the things alleged to	11:38:22
22	be in my hand are, in fact, not things	11:38:26
23	that I prepared.	11:38:29
24	Q. All right. Were you not allowed	11:38:32
25	to review transcripts of testimony?	11:38:38

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Linda Fairstein

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1 MR. BELDOCK: I'll withdraw 11:38:42
2 that. 11:38:44
3 Q. Judge Galligan directed that all 11:38:44
4 witnesses not be present, including you? 11:38:50
5 A. Correct. 11:38:55
6 Q. Didn't you review transcripts of 11:38:55
7 witnesses who testified? 11:39:00
8 MS. DAITZ: During the course of 11:39:01
9 the trial? 11:39:03
10 MR. BELDOCK: Yes, during the 11:39:03
11 course of the trial. 11:39:05
12 MS. DAITZ: You can answer. 11:39:06
13 A. Outside of the courtroom during 11:39:07
14 the course of the trial? 11:39:11
15 Q. Yes. 11:39:12
16 A. I don't recall doing it. And 11:39:13
17 one of Ms. Lederer's other supervisors may 11:39:16
18 have. 11:39:20
19 Q. For example, on the second page, 11:39:21
20 you have starting with [REDACTED] through 11:39:25
21 to the bottom of the page through [REDACTED] 11:39:37
22 you have a series of statements here given 11:39:43
23 to us by Corporation Counsel which we, 11:39:46
24 quote, handwritten notes by ADA Fairstein 11:39:53
25 regarding Wise statements and evidence. 11:39:57

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Linda Fairstein

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1	Then it reads handwritten notes	11:39:59
2	written by ADA Fairstein regarding	11:40:02
3	Richardson's statements and evidence.	11:40:04
4	Then it goes on, handwritten	11:40:06
5	notes by ADA Fairstein regarding Salaam	11:40:08
6	statements and evidence.	11:40:08
7	The next one goes on,	11:40:13
8	handwritten notes by ADA Fairstein	11:40:13
9	regarding Salaam statements and evidence	11:40:16
10	again.	11:40:17
11	And then handwritten notes by	11:40:17
12	ADA Fairstein regarding Briscoe statements	11:40:19
13	and evidence.	11:40:21
14	And finally, regarding Salaam	11:40:22
15	statements and evidence.	11:40:24
16	Are you saying that these	11:40:25
17	descriptions are inaccurate?	11:40:27
18	MS. DAITZ: What is the	11:40:28
19	right-hand column on this document?	11:40:29
20	A. Can you see, sir, to the --	11:40:32
21	MS. NELSON: Wait.	11:40:35
22	MS. DAITZ: Is that our revised	11:40:38
23	privileged log?	11:40:41
24	MR. BELDOCK: I believe so.	11:40:41
25	MS. DAITZ: So we revised the	11:40:42

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NYCLD_038943

Linda Fairstein

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1 entry to reflect the changes. If they 11:40:44
2 were originally misidentified and then the 11:40:47
3 privileged log was revised, then that's 11:40:50
4 the revision. 11:40:52

5 MR. BELDOCK: I understand what 11:40:53
6 you're saying. 11:40:54

7 Q. Did you review the Salaam, the 11:40:54
8 Sharonne Salaam testimony at the 11:40:57
9 suppression hearing during the time before 11:41:00
10 you testified at the trial? 11:41:02

11 A. I have no recollection as I sit 11:41:05
12 here today. But the five things you 11:41:07
13 directed me to, I did not write. The five 11:41:10
14 things that you've just asked me about, I 11:41:14
15 did not write. 11:41:16

16 Q. Do you know that as a fact, do 11:41:18
17 you know that because of the information 11:41:26
18 that is now on the right-hand column? 11:41:27

19 A. Both. 11:41:30

20 Q. When you say you know both, are 11:42:12
21 you saying that you have reviewed the 11:42:15
22 documents that are listed here, the ones I 11:42:17
23 just referred to and seen that the 11:42:20
24 handwritten notes on these documents are 11:42:23
25 not yours? 11:42:25

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Linda Fairstein

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1	A. No.	11:42:26
2	MS. DAITZ: I'm instructing the	11:42:27
3	witness not to answer on the grounds of	11:42:28
4	attorney work product and attorney-client	11:42:30
5	privilege.	11:42:32
6	Myron, I wish, I wish you would	11:42:33
7	have asked me about this before the	11:42:34
8	deposition today because it could have	11:42:36
9	saved a lot of time. I think it's	11:42:38
10	apparent that we misidentified handwriting	11:42:41
11	on some of the earlier privileged logs,	11:42:42
12	and we --	11:42:42
13	MR. BELDOCK: I don't know if	11:42:46
14	you have or you haven't. I want to know	11:42:46
15	whether the witness examined the documents	11:42:49
16	to determine whether they were or not in	11:42:51
17	her handwriting.	11:42:53
18	MS. DAITZ: And I'm instructing	11:42:54
19	her not to answer that question.	11:42:55
20	MR. BELDOCK: I understand.	11:42:56
21	We'll mark it for a ruling.	11:42:57
22	MS. NELSON: She already	11:43:00
23	answered it.	11:43:01
24	Q. Have you read any of the books	11:43:27
25	that have been written about the Central	11:43:29

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CERTIFICATION

I, Alice Schulman, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of April, 2013.



ALICE SCHULMAN

* * *

EXHIBIT 4

Page 608

RE: In re: McCRAY, RICHARDSON,
SANTANA, WISE and SALAAM Litigation,
Docket No. 03 CV 9685 (DAB) (RLE)

99 Park Avenue
New York, New York

May 1, 2013
9:40 a.m.

CONTINUED EXAMINATION BEFORE TRIAL of
LINDA FAIRSTEIN, a Defendant in the
above-entitled action, held at the above
time and place, taken before Alice
Schulman, a Notary Public of the State of
New York, pursuant to Notice and
stipulations between Counsel.

* * *

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NYCLD_039562

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1 record while I'll mark five or six 12:40:02
2 exhibits, please. 12:40:05
3 THE VIDEOGRAPHER: We are going 12:40:06
4 off the record. The time is 12:39. 12:40:07
5 (A recess was taken.) 12:40:10
6 (Six documents were hereby 12:40:10
7 marked as Fairstein Exhibits 48-53 for 12:40:10
8 identification, as of this date.) 12:49:49
9 THE VIDEOGRAPHER: We are going 12:49:49
10 back on the record. The time is 12:49. 12:49:59
11 Q. Ms. Fairstein, I placed before 12:50:03
12 you Exhibit 48 which is a copy of a 12:50:06
13 communication from you to Jim Kindler 12:50:11
14 dated July 15, 2002. Do you recognize it 12:50:16
15 as such? 12:50:19
16 A. Yes. 12:50:20
17 Q. Was this sent by computer or is 12:50:20
18 this a separately prepared document? 12:50:26
19 MS. DAITZ: Objection to form. 12:50:29
20 A. I have no idea how it was sent. 12:50:31
21 Q. When you gave it to your 12:50:33
22 lawyers, in what form did you give it? 12:50:39
23 MS. DAITZ: Objection to form. 12:50:42
24 A. (No verbal response.) 12:51:03
25 MS. FISHER-BYRIALSEN: Are we 12:51:03

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1 waiting for an answer? 12:51:05

2 Q. There's a fax line at the bottom 12:51:06

3 that will assist you. 12:51:09

4 MS. FISHER-BYRIALSEN: There's 12:51:10

5 no answer to the previous question. 12:51:11

6 MR. BELDOCK: I know, I'm just 12:51:13

7 moving it along. 12:51:14

8 A. Yes, sir. 12:51:24

9 Q. In what form did you give this 12:51:46

10 to your lawyers? 12:51:49

11 A. I'm not sure that I did. 12:51:50

12 Q. There's a fax line at the bottom 12:51:52

13 that says Linda Fairstein, July 16, '02, 12:51:54

14 09:58. Does this indicate a fax that you 12:51:59

15 sent? 12:52:04

16 A. Sent, I didn't have lawyers in 12:52:05

17 '02, so I faxed to Mr. Kindler, yes. 12:52:08

18 Q. In your letter, you're talking 12:52:13

19 to Kindler about the reinvestigation, 12:52:20

20 right? 12:52:22

21 A. Yes. 12:52:22

22 Q. And you're giving him 12:52:23

23 information to undermine the 12:52:26

24 reinvestigation, are you not? 12:52:28

25 MS. DAITZ: Objection. 12:52:30

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Page 741

1	A.	No.	12:52:31
2	Q.	You say in the first line, I	12:52:31
3		thought I would drop you a line because I	12:52:42
4		don't now how else to get this under your	12:52:44
5		nose. Does that mean that you hadn't	12:52:47
6		spoken to him?	12:52:49
7	A.	Today, I don't know what it	12:52:50
8		means 11 years ago.	12:52:52
9	Q.	Then you go on to say that you	12:52:53
10		heard, quote, most of what's going on in	12:52:56
11		regard to the jogger's case and Reyes's	12:53:00
12		story, unquote. From whom had you heard	12:53:02
13		all that?	12:53:05
14	A.	The people I named when you	12:53:05
15		asked me that question the other day.	12:53:08
16		There was a lot of office gossip.	12:53:10
17	Q.	And I said as of or before July	12:53:13
18		15, 2002. So outside of office gossip and	12:53:14
19		people, from whom had you heard about it.	12:53:18
20	A.	I don't believe I'd heard	12:53:20
21		outside of former colleagues.	12:53:23
22	Q.	In the first sub numbered	12:53:26
23		paragraph 1, you say: "I heard this in	12:53:28
24		late May - from two former case	12:53:32
25		detectives."	12:53:32

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1 From whom, to whom were you 12:53:38
2 referring? 12:53:41
3 A. Today, I have no idea. 12:53:42
4 Q. In subparagraph 2 you say, I do 12:53:44
5 still continue to hear from ex-NYPD guys. 12:53:52
6 To whom were you referring? 12:53:56
7 A. Mike Sheehan and several people 12:53:57
8 from Manhattan Special Victims, in 12:54:13
9 particular, Richard Marcus. 12:54:17
10 Q. Richard Marcus? 12:54:18
11 A. Yes. 12:54:22
12 Q. Who was he? 12:54:22
13 A. He was the, he was the 12:54:23
14 lieutenant in charge of Special Victims 12:54:26
15 before Sergeant Fiston. 12:54:28
16 Q. You say in paragraph, 12:54:30
17 subparagraph 4: "I have heard all the 12:54:33
18 reports of things that were, quote, done 12:54:38
19 wrong, unquote, or, quote, not done, 12:54:40
20 unquote, by Elizabeth and me. It 12:54:43
21 continues, that that is what the sentence 12:54:47
22 reads. 12:54:51
23 What things were you referring 12:54:52
24 to that were done wrong or not done by 12:54:53
25 Elizabeth and you. 12:54:56

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1 MS. DAITZ: Objection to form. 12:54:57

2 A. Things that Ms. Ryan was telling 12:54:58

3 people in the office we had not done. 12:55:06

4 Q. It says I heard all the reports 12:55:10

5 of things that were done wrong or not 12:55:12

6 done. Can you specify any of them? 12:55:15

7 A. No. Today, no. 12:55:17

8 Q. You say you may recall at the 12:55:18

9 same time I assigned the case to her, 12:55:22

10 Nancy had assigned it to Peter. And the 12:55:24

11 boss made the call later in the day to let 12:55:32

12 Liz keep it. 12:55:36

13 When you talked the other day, I 12:55:45

14 think you said it was someone else, not 12:55:47

15 Ryan, who had assigned the case. 12:55:50

16 A. Yes, it's definitely John Fried. 12:55:52

17 It was, Ryan, it was my mistake, Ryan was 12:55:55

18 not, I was misspeaking. Ryan had not been 12:55:57

19 chief of the Trial Division yet. 12:56:00

20 Q. This is 2002? 12:56:02

21 A. Right. 12:56:03

22 Q. That was your memory then that 12:56:04

23 Ryan had assigned it to Peter, correct? 12:56:06

24 A. A memory or a mistaken 12:56:08

25 communication. 12:56:10

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1 Q. Why did you tell us the other 12:56:10
2 day that it was Friez? 12:56:13
3 MS. DAITZ: Fried. 12:56:16
4 A. Because I know that it was 12:56:16
5 Fried. Fried, F-R-I-E-D. 12:56:18
6 Q. If you knew it was Fried, but 12:56:20
7 you said it was Nancy in this letter, I 12:56:22
8 don't understand. 12:56:25
9 A. I guess I made a mistake. 12:56:25
10 MS. DAITZ: In the letter or in 12:56:29
11 the testimony? 12:56:30
12 THE WITNESS: In the letter. 12:56:31
13 I'm sorry, thank you. 12:56:32
14 A. Yes, in my testimony, I'm quite 12:56:32
15 clear it was John Fried. 12:56:35
16 Q. You say in the next paragraph 12:56:37
17 that when you were in the precinct, 12:56:40
18 precincts until Saturday morning at four 12:56:44
19 a.m., you did a number of things, quote, 12:56:46
20 including witness interviews, unquote. 12:56:50
21 You have told us today, and I 12:56:52
22 think the other day, that you didn't do 12:56:57
23 any witness interviews. Is this statement 12:56:58
24 a mistake too? 12:57:02
25 A. No. 12:57:03

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1 Q. This statement is accurate? 12:57:03

2 A. Yes. 12:57:05

3 Q. Now, what witness interviews did 12:57:06

4 you do? 12:57:08

5 A. David Nocenti, Sharonne Salaam. 12:57:08

6 Q. In the next to the last 12:57:25

7 paragraph you say, there is no one except 12:57:30

8 you to whom I can say that it might make 12:57:33

9 sense to talk to me about it too, unquote. 12:57:38

10 Why did you pick this spineless 12:57:39

11 and lazy person out as someone who was the 12:57:42

12 only person you could talk to in the 12:57:47

13 office? 12:57:49

14 MS. DAITZ: Objection to form. 12:57:49

15 A. As I said earlier, I didn't say 12:57:50

16 the only person in the office. The person 12:57:54

17 that might make sense to because he 12:57:56

18 supervised Nancy Ryan. 12:57:59

19 And as I said earlier, he was my 12:58:00

20 good friend. I thought he had terrific 12:58:03

21 legal judgment, was a good lawyer, we got 12:58:06

22 along well, and he was the person I sought 12:58:10

23 out to have me be heard because we had 12:58:12

24 enjoyed mutual respect and friendship. 12:58:17

25 Q. The next exhibit is 49. This is 12:58:24

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CERTIFICATION

I, Alice Schulman, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of May 2013.



ALICE SCHULMAN

* * *

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EXHIBIT 5

Weaknesses in Central Park Jogger Case Were Clear All Along

New York Law Journal (Online)

This article also appears in the following ALM publications:

The National Law Journal

June 3, 2019 Monday

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New York Law Journal

Length: 475 words

Body

Editor's Note: With the release of Netflix's miniseries "When They See Us," there is renewed interest in the criminal prosecution in the assault of the Central Park jogger. So, we're sharing this letter to the editor that we posted in July of 2018.

Good people sometimes do bad things, and when a wrong is identified, the hope is that an acknowledgment will be made. So we are reminded in reading the July 20 [Law Journal report of the release of long concealed documents](#) relating to the destructive prosecution of five teenagers swept up in the aftermath of the brutal assault on a jogger in Central Park in 1989. When confronted with additional facts, former District Attorney Robert M. Morgenthau assigned one of his most talented aides to re-investigate the long-closed case, which led to his publicly joining in with the defense motion to set aside the convictions and, importantly, dismiss the indictments. Notwithstanding the dismissals, and an accumulation of evidence supporting that resolution, former sex crimes bureau chief, Linda Fairstein, continues to insist that these wrongfully prosecuted youngsters should have been convicted.

Warnings of the prosecution's infirmity were there from the very beginning: the "correcting" of a so-called "confession" after an all-night interrogation, the continuation of the sexual assaults in the same community that preceded and succeeded the arrest of the teenagers; the DNA report that placed not one of the youngsters at the crime scene; and the prosecutor's surreptitious adjustment of the timing of the events between the trial of the first group of defendants and the second. Indeed, before either trial, the prosecuting team had obtained the DNA of the actual assailant, identified as the man who had committed numerous sexual assaults in that community, but never bothered to explore a match with the DNA left on the central park jogger. This is not the stuff that warrants a conclusion of the youngsters' guilt.

Notwithstanding Fairstein's unsupported hypothesis, the long-delayed release of additional documents, always in the control of the prosecution, will not "change the narrative." What is known beyond any question, is that sixteen-year old Kharey Wise was sent to prison for a crime he did not commit, where he remained until he was thirty, and that this wrenching crime was not finally resolved until the actual and lone assailant, Matias Reyes, came forward with the same DNA match long in the hands of the prosecution. Nor should it be forgotten that numerous other victims in the community were left vulnerable because of the prosecutors' close-minded, slipshod rush to judgment against the wrong defendants.

Weaknesses in Central Park Jogger Case Were Clear All Along

Eric A. Seiff, who is of counsel to Storch Amini, was the attorney for Kharey Wise at the 2003 proceedings reversing the conviction and dismissing the indictment.

Load-Date: July 6, 2019

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